United States Court of Appeals
for the Second Circuit

APPENDIX

NO. 77-4198

United States Court of Appeals
FOR THE SECOND CIRCUIT

B
P/S

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
and
SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON
WORKERS, AFL-CIO,
Intervenor,
v.
INDEPENDENT ASSOCIATION OF STEEL
FABRICATORS, INC., ET AL.,
Respondents,
and
LOCAL 810, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA, AFL-CIO,
Intervenor,

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES COURT OF APPEALS
FILED
MAR 7 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX

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Pages 1 - 583

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Independent Association of Steel Fabricators Inc., et al.

Case Nos.: 29-CA-4853, 29-CA-4922, 29-CA-4772, 29-CA-4921, and 29-CB-2461

12.18.75	Charge filed in Case No. 29-CA-4772
12.18.75	Charge filed in Case No. 29-CA-4921 (formerly 2-CA-14034)
1.28.76	Complaint and Notice of Hearing in Case No. 29-CA-4921 (formerly 2-CA-14034, dated
2.6.76	Respondent Roma Iron Works' request for extension of time to to file answer, dated
2.6.76	Charge filed in Case No. 29-CA-4853
2.9.76	Charge filed in Case No. 29-CA-4922 (formerly 2-CA-14106)
2.9.76	Complaint and Notice of Hearing in Case No. 29-CA-4772, dated
Undated	Respondent Roma Iron Works' Answer
2.13.76	Order Extending Time to Answer, dated
3.1.76	First Amended Charge filed in Case No. 29-CA-4853
3.1.76	First Amended Charge filed in Case No. 29-CA-4922
3.23.76	Order Postponing Hearing, dated
3.25.76	Respondent Greenpoint Ornamental's Answer in Case No. 29-CA-4772, dated
4.1.76	Order Rescheduling Hearing in Case No. 29-CA-4772
4.14.76	Charge filed in Case No. 29-CB-2461
4.27.76	Regional Director's Order Consolidating Cases, Amended Complaint and Notice of Hearing in Case Nos. 29-CA-4853,4922, 4772, and 4921, dated

5.7.76	Respondent's request for adjournment of Hearing, dated
5.7.76	Respondent's Motion to Consolidate Cases, dated
5.7.76 5	Answer to Consolidated Complaint, on behalf of all Respondent's except Ikenson Iron Works, Inc., received
5.10.76	Answer to Consolidated Complaint by Ikenson Iron Works, dated
5.14.76	Order Rescheduling Hearing, dated
5.17.76	General Counsel's Opposition to Motion to Consolidate, dated
5.20.76	Amendment to Complaint, dated
5.25.76	Answer to Amended Consolidated Complaint, dated
5.25.76	Party to the Contract's telegram joining in the application of the Independent Association of Steel Fabricators, Inc., and Acme Wire Works to Consolidate Cases, dated
5.26.76	Respondent's Demand for Bill of Particulars, dated
5.26.76	Administrative Law Judge's Order Denying Motion to Consolidate, dated
6.2.76	General Counsel's Reply to Demand for Bill of Particulars, dated
6.3.76	Party to the Contract's Motion to Change Place of Hearing, dated
6.4.76	Party to Contract's Answer, dated
6.4.76	Respondent Spigner and Sons' Answer to Complaint, dated
6.4.76	Complaint and Notice of Hearing in Case No. 4-CB-2461, dated
6.7.76	Hearing opened
6.16.76	Respondent Union's Answer in 29-CB-2461, dated
6.17.76	Respondent Union's Demand for Bill of Particular, dated
6.25.76	General Counsel's Opposition in Part and Reply in Part to Demand for Bill of Particulars, dated

3.14.77	Administrative Law Judge's Decision issued
4.18.77	Administrative Law Judge's Errata, date
4.18.77	Party to the Contract's Exception, received
4.18.77	Exceptions of Respondent's Associations and Employer's (other than Heuser Iron Works, Inc., and Spigner and Sons' Structural Steel Co., Inc.) to the Decision of the Administrative Law Judge, received
8.11.77	Decision and Order issued by the National Labor Relations Board
11.16.77	Board's Order Correcting Decision and Order, issued

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twenty-Ninth Region

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In the Matter of:

INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC.; ACHILLES CONSTRUCTION CO., INC.; GREENPOINT ORNAMENTAL AND STRUCTURAL IRON WORKS, INC.; HEUSER IRON WORKS INC.; IKENSON IRON WORKS, INC.; KUNO STEEL PRODUCTS CORP.; LONG ISLAND STEEL PRODUCTS CO., INC.; MASTER IRON CRAFT CORP.; MELTO METAL PRODUCTS CO., INC.; MOHAWK STEEL FABRICATORS, INC.; THE PEELLE COMPANY; ROMAN IRON WORKS, INC.; SPIGNER AND SONS STRUCTURAL STEEL CO., INC.; S. CERVENKA AND SONS, INC.

29-CA-4853

PAXTON METALCRAFT CORP., DIVISION OF APEX INDUSTRIES, INC.; KOENIG IRON WORKS, INC.; TROJAN STEEL CORP.; G. ZAFFINO AND SONS, INC.; ROMA IRON WORKS, INC.

29-CA-4922

GREENPOINT ORNAMENTAL AND STRUCTURAL IRON WORKS, INC.

29-CA-4772

ROMA IRON WORKS, INC.

29-CA-4921

-and-

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO

-and-

STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Party to the Contract

- x

16 Court Street
Brooklyn, New York
Monday, June 7, 1976

The above-entitled matter came on for hearing, pursuant to notice, at 11:00 a.m.

BEFORE:

Honorable MORTON D. FRIEDMAN, Administrative Law Judge

APPEARANCES:

ALVIN BLYER, Esq.	16 Court Street, Brooklyn, New York, appearing on behalf of Counsel for the General Counsel.
SIPSER, WEINSTOCK, HARPER, DORN & LIEBOWITZ, Esqs.	By BELLE HARPER, Esq., of Counsel, 380 Madison Avenue, New York, New York, appearing on behalf of Local 455.
MIRKIN, BARRE, SALTSTEIN & GORDON, P.C.	By ROBERT M. ZISKIN, Esq., of Counsel, 98 Cutter Mill Road, Great Neck, New York, appearing on behalf of Local 810.
BLUESTONE, KLIEGMAN & ISRAEL, Esqs.	By STANLEY ISRAEL, Esq., of Counsel, 509 Madison Avenue, New York, New York, appearing on behalf of the Association, Achilles, Greenpoint, Kuno, Long Island Steel, Master Iron Craft, Melto, Mohawk, Peelle, Roman, Cervenka, Paxton, Koenig, Trojan, Zaffino, and Roma.
SEYMOUR IKENSON, Secretary-Treasurer	22 Sagamore Hill Drive, Port Washington, New York, appearing on behalf of Ikenson Iron Works.

APPEARANCES (cont'd):

HAROLD SPIGNER, Esq.

3000 Marcus Avenue,
Lake Success, New York,
appearing on behalf of
Spigner & Sons.

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PROCEEDINGS

JUDGE FRIEDMAN: The hearing is open.

This is a formal proceeding in the case of -- we'll use Greenpoint Ornamental as the title, Greenpoint Ornamental and Structural Iron Works, Inc., Cases Nos. 29-CA-4772, and so forth.

The name of the Administrative Law Judge is Morton D. Friedman.

Will counsel please note their appearances for the record?

MR. BLYER: On behalf of the General Counsel, Alvin Blyer, B-l-y-e-r, 16 Court Street, Brooklyn, New York.

MS. HARPER: On behalf of the Charging Party, Belle Harper, 380 Madison Avenue.

MR. ZISKIN: On behalf of Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, law firm of Mirkin, Barre, Saltstein & Gordon, P.C., by Robert M. Ziskin.

MR. SPIGNER: On behalf of Respondent Spigner and Sons Structural Steel Company, Harold S. Spigner, 3000 Marcus Avenue, Lake Success, New York.

MR. ISRAEL: On behalf of all Respondents other than Heuser Iron Works, Inc.; Ikenson Iron Works, Inc.; and Spigner and Sons Structural Steel Co., Inc., Stanley Israel, 509 Madison Avenue, New York.

JUDGE FRIEDMAN: Thank you, Mr. Israel.

With regard to -- I saw an answer for Ikenson.

Did Heuser, did they ever file an answer?

MR. BLYER: I don't believe they did.

JUDGE FRIEDMAN: All right. I just want to check that.

All right, now, you may proceed with your formal papers.

MR. BLYER: Thank you, Your Honor.

I'd like to have, Your Honor, marked for identification the formal papers in this matter. They include an index, which is marked as General Counsel's 1-OO.

JUDGE FRIEDMAN: All right.

MR. BLYER: All parties, I believe, have seen the formal papers, and I do not believe there are any objections to their introduction into evidence.

(Documents above referred to marked General Counsel's Exhibit No. 1 for identification.)

JUDGE FRIEDMAN: All right.

Are there any objections to the introduction of those formal papers?

Is it 1-A through 1- --

MR. BLYER: Double O, Your Honor.

JUDGE FRIEDMAN: I don't hear any objection, so I'm receiving it.

(Documents heretofore marked General Counsel's Exhibit No. 1 received in evidence.)

JUDGE FRIEDMAN: All right.

Mr. Blyer?

MR. BLYER: Your Honor, while off the record we worked up the following stipulation with regard to the complaint.

All parties have agreed to stipulate to admit paragraphs 1, 2, 4, 5, and 6 of the complaint.

The only modification would be in paragraph 2. It should read, "Resondent Association, Respondents 1, and Respondents 2 are and have been at all times material herein corporations duly organized under and existing by virtue of the laws of the State of New York and other states of the United States."

With that modification, I understand everyone is willing to admit paragraphs 1, 2, 4, 5, and 6 of the complaint.

JUDGE FRIEDMAN: Admit.

All right. 1, 2, 3, 4 --

MR. BLYER: No. 3 is not admitted, Your Honor.

JUDGE FRIEDMAN: All right.

1, 2, 4, 5, and 6.

4, 5, and 6 were admitted by the -- by Mr. Israel in the first instance, I believe, anyway.

All right, thank you, gentlemen.

You say you had some minor amendments?

MR. BLYER: Yes, Your Honor.

With regard to paragraph 20(a), which is the recently amended complaint, I would like to amend that to read "in or about June '75 and continuing to date." The words "and continuing to date" would be the only addition there.

JUDGE FRIEDMAN: All right.

Is there any objection to that?

MR. SPIGNER: I didn't quite get that.

JUDGE FRIEDMAN: You'd better repeat it.

MR. BLYER: Paragraph 20(a), which is the new -- is the recent amendment of the --

MR. SPIGNER: 20(a)?

MS. HARPER: It's the amendment of May 20.

JUDGE FRIEDMAN: Paragraph 20(a). I think he thought you said 28.

MR. ZISKIN: I have it right here.

MR. SPIGNER: I don't have that.

MR. BLYER: I have a copy for you.

I sent that to you in the mail.

The only addition to 20(a) is after the date June '75 in the first sentence the words "and continuing to date" are being included.

JUDGE FRIEDMAN: All right.

Anything further?

MR. BLYER: Yes, Your Honor.

JUDGE FRIEDMAN: Amendment permitted.

MR. BLYER: In paragraph 11(d), I'd like to amend the complaint to include -- that's 11(d) --

JUDGE FRIEDMAN: "D" as in "David"?

MR. BLYER: "D," Your Honor, yes.

-- the additional date of "in or about December 1975" in addition to what's already alleged, in or about January 16th and 19th.

JUDGE FRIEDMAN: You just want the words "or about"?

MR. BLYER: I want to add "in or about December 1975."

JUDGE FRIEDMAN: Is this (d)?

MR. BLYER: 11(d), paragraph 6.

JUDGE FRIEDMAN: That's what I wanted to find out.

Any further amendment?

MR. BLYER: Yes, sir, one other, Your Honor.

JUDGE FRIEDMAN: Let's see about this.

Do I hear any objections?

MR. ZISKIN: I have no objection.

JUDGE FRIEDMAN: All right.

Hearing none, it's ordered amended as requested.

MR. BLYER: The final one, I hope, is paragraph 9. More accurately, it should read -- and I'm moving to amend it to read as such -- "For many years Local 45 and the employer members of Respondent Association have been parties to individual collective bargaining agreements covering units of production and maintenance employees, including plant clerical employees, the last such agreements having expiration date of June 30, '75."

JUDGE FRIEDMAN: Is there any reason for that?

Isn't the description in paragraph 7 sufficient?

MR. BLYER: As Mr. Israel pointed out, it's not exactly accurate, because paragraph 9 refers to the individual contracts while paragraph 7 refers --

JUDGE FRIEDMAN: Is the overall unit?

MR. BLYER: Yes.

And I would like that change to be reflected wherever else in the complaint it would be appropriate. In other words, in some instances paragraph 7 is referred to, and some instances it's probably more appropriate to have this language I just added in paragraph 9 --

JUDGE FRIEDMAN: P&M excluding --

MR. BLYER: P&M employees including plant clerical employees.

JUDGE FRIEDMAN: Including.

MR. BLYER: I believe that's it, Your Honor.

JUDGE FRIEDMAN: All right.

If there are no objections, I'll order that amendment also.

MR. BLYER: Thank you very much.

JUDGE FRIEDMAN: All right.

Now, if you'll proceed. You want to --

MR. BLYER: I have a brief opening statement, Your Honor.

General Counsel will show by the preponderance of the evidence the following:

For many years Local 455 has had individual collective bargaining agreements with the employers named in the complaint.

In about the spring of 1975 the 18 employers named in the complaint and ten other employers with whom 455 also had had individual contracts with for many years formed and became members of the Independent Association of Steel Fabricators, Inc., a multi-employer group which has as one of its functions to bargain collectively with Local 455 on behalf of its employer members and to reach an agreement with 455.

Once the Association was formed, a negotiating committee was made up from among the employer members of the Association. And, in fact, they bargained with 455.

About five bargaining sessions occurred between June 16, the first date bargaining took place, and June 30 of '75.

The individual contracts referred to already had expiration dates of June 30, '75. And, when no agreement for a new contract was reached, a strike commenced.

That strike continues to date with regard to 16 of the 18 employers nam[illegible]n the complaint.

Now, the evi[illegible]ill show, Your Honor, that before the strike began and continuing thereafter the employer members of the Association and the Association were exploring ways of eliminating their legal obligations to bargain with 455 and seeking to sign up with another union.

In August '75 Association president Spigner informed 455 president Colavito that, unless 455 would give in to their contract demands, 455 would be replaced by 810 of the Teamsters, and that certain employer members were already prepared to sign with 810.

In and around October '75, with the consent of the Association and the employer members, 810 was contacted by a representative of the Association and notified that the employer members have no objection to their organizing their employees.

Thereafter, such organization took -- occurred.

However, as the evidence will indicate, the employer members of the Association were not content with simply consenting to 810's organizing of their employees, but actively assisted 810 in their efforts to organize their employees and to displace Local 455.

This assistance took many forms, including, inter alia, urging and encouraging employees to sign with 810 and abandon 455, threatening employees with discharge and plant closure unless they did so, discharging certain employees for failing to join 810 and abandon 455, promising employees benefits to induce them to enjoin -- to join 810 and abandon 455, escorting employees to the offices of Local 810 and remaining present when 810 officials sought to persuade employees to abandon 455 and to sign up with 810, and signing collective bargaining agreements with 810 in the case of at least eleven employers, agreements requiring employees to remain 810 members or be terminated despite that, at the time of the entering into these agreements, the employees had an obligation and duty to recognize and bargain with 455.

JUDGE FRIEDMAN: The employees or the employer?

MR. BLYER: Employers.

Further, in mid-January while negotiations were continuing, 16 of the 18 employers named in this complaint unilaterally withdrew authorization from this Association to bargain on their behalf with 455 and to reach a contract with it.

Local 455 objected to their withdrawal, calling it improper and illegal.

Five of the employer members of the Association were unwilling to follow the lead of the others and continued to bargain with 455 and reached a contract with it in late January '76.

Thereafter, 455 requested that the 16 employers who had unilaterally withdrawn from bargaining and who had refused to sign the contract and two others who had not withdrawn from -- excuse me, who had not withdrawn bargaining authority from the Association to sign the contract.

But all 18 refused to do so or to implement its terms.

They also refused to reinstate the striking employees, who, through the union, made up conditional offers to return to work in and around late February of '76.

Recently, however, it should be noted that two of the 18 did sign and implement the agreements and reinstate some of the strikers.

It is these facts, Your Honor, that have brought on the instant complaint.

General Counsel takes the position that the Act was violated by, among other things, the unilateral withdrawal of the employer members from collective bargaining during the course of negotiations without the consent of the Union; two, by their failure to sign and honor the agreement reached by 455 with those employers who did not unilaterally withdraw from bargaining; three, by Local 810's -- excuse me, by the employer members' active support and assistance for 810, which included in about eleven cases a signing of a collective bargaining agreement with 810 when they had a duty to bargain with 455, and also by refusing to reinstate the striking employees upon their unconditional officers to return to work.

Now, it's anticipated, Your Honor, that the Respondents will attempt to justify at least part of their alleged unlawful conduct on the grounds that Local 455 has committed violations of Section 8(b)(1)(a) of the Act.

It is General Counsel's position that the 8(b)(1)(a) conduct of Local 455 is insufficient in severity and frequency and involves such a small portion of the strikers -- a too small portion of the strikers to affect the issuance of a bargaining order, particularly when it's understood that the strike has been in effect since July of 1975, and many of the employers involved herein have committed certain persuasive unfair labor practices themselves.

Moreover, it should also be noted that we're dealing here with an incumbent union, one that has been the bargaining representative of the employees in some of these shops for ten, twenty, and thirty years.

Generally, the Laura Modes defense has been applied to a situation where the Union is not an incumbent, and it may well be that the standard here should be different for an incumbent labor organization.

In any event, as I've noted above, it is General Counsel's belief that the -- that issue will never have to be reached because, on balance, the Union's 8(b)(1)(a) is not egregious or pervasive enough to preclude the issuance of a bargaining order in this case.

Thank you very much, Your Honor.

JUDGE FRIEDMAN: I think that perhaps I'll have to set some sort of order here.

Inasmuch as Mr. Israel represents the bulk -- unless you have something to add?

MS. HARPER: No.

We would support, of course, the statement of General Counsel.

JUDGE FRIEDMAN: I didn't mean to ignore your presence.

MS. HARPER: No.

JUDGE FRIEDMAN: Mr. Israel, representing the bulk of the employers here, I think that I'll have you in that order, and then we'll go on to the other Respondents represented, that's Mr. Spigner, and then the Party to the Contract. And that's the way we'll try to keep the order during the hearing, gentlemen.

MR. IKENSON: My name is Ikenson, and I came as an individual without representation.

JUDGE FRIEDMAN: Mr. Ikenson, sit right up there at the counsel table, and we'll note your appearance.

Would you please -- your appearance has already been noted.

You are 22 Sagamore Hill Drive, Port Washington, New York?

MR. IKENSON: That's correct.

JUDGE FRIEDMAN: You have a right to participate, ask questions, and put on witnesses, and --

MR. IKENSON: I first would like to know why I'm involved in this thing.

JUDGE FRIEDMAN: It's not for me to say right now, Mr. Ikenson.

You are here as a Respondent. You'll have to conduct yourself in that manner.

Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

Before we proceed, Mr. Israel, I didn't mean to interrupt you. I'm very sorry about this interruption.

I wanted to say that I think, if we're going to have any motions or any objections, that we'd better state the reasons for them so I'll know what I'm ruling on, because they're represented by so many counsel and there are so many Respondents; number one.

Number two, I assume you all know about the documentary evidence has to be submitted in duplicate if you're going to submit it.

And I think we can proceed with that.

Thank you, Mr. Israel. Go ahead.

MR. ISRAEL: Your Honor, if I may, I would like to point out to you at this time certain pending matters which are either in the form of assisting motions or perhaps impending applications at this point.

One motion, pre-hearing motion, was made by me, motion to consolidate this case with the so-called Acme case.

Now, in certain off-the-record colloquy, I understand that motion may have been denied. But I would state that I have not seen any decision. I've received no notification of any disposition of that motion at this point.

JUDGE FRIEDMAN: Mr. Israel, as I said before, I had a fragmentary file in Washington, but one of the fragments that was in the file was an order by Judge Leff -- not by me, by Judge Leff -- denying the motion to consolidate.

MR. BLYER: You can have that.

JUDGE FRIEDMAN: I assume that it had been mailed to you and you had not received it by this morning. That's why I haven't got it. I don't know the date of the order, but it was probably last week.

MR. ISRAEL: May 26.

I have not received it.

There are other matters which have been moved prior to this date.

The attorneys for eighteen joined in the application to consolidate this case with the Acme case, but, at the same time, moved to hold in abeyance either this case, whether consolidated or not, or the consolidated with Acme, pending disposition of certain charges it had at that time filed with this Region, 8(b)(1) charges against Local 455.

Now, I learned for the first time this morning that in fact a complaint has issued out of this Region against Local 455. And I just had a chance to read that complaint very briefly in the corridor about a half hour ago.

Now, as Mr. Blyer has pointed out to you, anticipating our defense, one of our defenses, he referred to a possible Laura Modes type defense and a possible claim of violence and illegal actions on the part of 455 which would preclude certain relief being granted.

Mr. Blyer stated to you that he did --

JUDGE FRIEDMAN: Laura Modes, as I recall, just concluded the granting of an order -- bargaining order.

I was the Administrative Law Judge in Laura Modes.

MR. ISRAEL: Mr. Blyer said that he doesn't believe that that defense would have any serious import on this case because it wasn't egregious, or very egregious.

Obviously what's being said is that, quantitatively, it's Mr. Blyer's or the Counsel's opinion that the charges against 455 really shouldn't bear on the relief in this case.

That's a quantitative decision which ultimately would be for you to determine.

In fact, Mr. Blyer has not said that the charge against 455 and the defense that we anticipate raising are not relevant. They're very much relevant.

Now, having read the complaint which issued Friday against 455, it deals with precisely this case.

It deals with many of the items which will either be the subject of cross-examination or certainly items of affirmative defense which are going to be put in by the Respondents.

Four of the companies whose employees are involved in the 455 complaint are Respondents in this particular case.

The strike we're actually talking about, this particular strike, this particular act, it's an ongoing series involving a number of companies.

Whereas I didn't make this motion but I simply supported when it was made by 810, that was prior to the time the complaint was issued, now that it has been issued and is returnable, as I understand it, June 21, only two weeks from today, it seems to me that the only sensible procedure and totally appropriate procedure would be to consolidate those two cases and put them both off for June 21.

Absent that, we're not only going to have a protracted hearing in this particular hearing, but we're going to have a protracted hearing in the 455 case; and they're essentially identical.

We're going to be repeating the same witnesses and the same witnesses.

I'd have to defer to Mr. Ziskin because it's his motion. I fully support it. I think the matter should be put over to the 21st and consolidated.

There are, as I understand it, two other motions or at least one other motion made by Mr. Ziskin, one of which I supported.

And that motion -- one of the two motions which I saw in my office the end of last week was an application on behalf of 810. I believe he asked for a secure or safe hearing room.

Now, without getting into the substantive aspects of this case, Your Honor, we are dealing with seven months of violence, physical injury, property damage, threats, and death growing out of this overall situation.

And I fully concur, in view of the fact that we had a most, most unfortunate occurrence just a few short weeks ago which was written up in all the newspapers in New York City involving the deaths of two individuals, in view of the fact we're going to have a protracted hearing, a secure, safe hearing rooms perhaps in the Federal Court with U.S. marshals in the hearing room would be totally appropriate.

I understand also there is an additional application under the Freedom of Information Act, which I'm not familiar with that.

I think these matters could be disposed of and should be disposed of.

JUDGE FRIEDMAN: Can we hear everybody, and then I'll -- in the first place, I haven't seen the complaint in the other action, so I can't rule on that.

MR. SPIGNER: I have no opening statement.

JUDGE FRIEDMAN: Mr. Ziskin?

MR. ZISKIN: Your Honor, as Mr. Israel pointed out, we have the motion involving Acme. I made a motion to consolidate the instant case with the Acme case.

And I further made an application in that motion that both of those cases be consolidated with what was then a pending 8(b)(1)(a) charge against Local 455.

My motion, to my knowledge, is still unanswered with respect to my application to join the two cases together and to consolidate with the 8(b)(1)(a) case.

On Friday afternoon I was advised by the Region that, in fact, an 8(b)(1)(a) complaint had issued and is scheduled for hearing June 21.

If one were to look at the complaint in the 8(b)(1)(a) case and examine it in connection with the existing complaint in this particular proceeding, you'll note that there are a number of paragraphs therein which track each other, and that will call for the presentation of evidence by both parties, all three parties in these proceedings.

Now, as Mr. Israel indicated, I anticipated there is going to be a Laura Modes defense.

There will be a Laura Modes defense here in all probability whether or not the complaint had issued, but in the complaint -- and I suppose, given some additional substance to the defense, the complaint did issue by the Region.

These issues, if they were to be litigated three times, would serve no purpose.

It would exacerbate the situation between the parties because it goes into material and issues that on the surface become quite inflammatory and quite controversial.

It would serve no purpose to have witnesses brought down to a hearing three times to testify to the same events.

In addition, we would in effect, if we proceeded the way the Region would choose to handle this matter, try those very same issues in three separate proceedings with the same witnesses with the overlap of this case and the Acme case in terms of substantive allegations concerning the parties' respective positions to each other dating back many years in history for collective bargaining purposes for you to consider.

For those reasons, and with the complaint actually having been issued by the Region on Friday, we strongly urge that these three matters be consolidated, not only for the purpose of the witnesses, but for the purposes of economy and for the purposes of having an orderly proceeding.

I think it would serve no purpose to try each of these cases separately when they're so intertwined and factual.

That motion is pending.

I have a motion with respect to the holding of this hearing in the Federal District Court.

Due to the nature of the 8(b)(1) allegations -- and

I know you haven't had an opportunity to look at the complaint, but there are important allegations in that 8(b)(1) complaint, and there will be witnesses testifying to events of violence.

And I think that it would be most appropriate to make sure that we hold this hearing in a room that's really large enough for all the parties so the parties won't be on top of each other, which I now find to be an advantageous situation. I was surprised this morning to find we were in the Region's largest hearing room.

As Your Honor is no doubt aware, the Region has some small hearing rooms. This happens to be its very largest.

And I thought that, quite frankly, for those purposes, and the fact that we do have so many counsel at the table, that it would be advantageous to have the hearing in the Federal District Co9rt, which is just two blocks away.

And this Region on previous occasions has used the Federal District Court for the purposes of holding unfair labor practice hearings, and I know that the Chief Judge has been most accommodating on previous circumstances in permitting us to use his facilities when he's had a courtroom available.

And, for those reasons, I again press my motion with respect to the holding of the hearing just two blocks away at the Federal District Court.

I also have a pending application, which I filed pursuant to the amendments of the National Labor Relations Act under the Freedom of Information Act, requesting affidavits in advance of this hearing.

That application was filed some time ago. And, on Friday, I received a letter from the office of the General Counsel of the National Labor Relations Board dated June 2nd, acknowledging receipt of my request under the Freedom of Information Act, and noting that my request for the production of these documents would be referred to the Regional Director inasmuch as the case was still pending before the Regional Director.

Now, the Regional Director has not yet ruled on my application, and I think it imperative to have these affidavits in advance of the hearing.

I'm fully aware of the Jencks rule, and I totally understand what position you might take in advance of your stating it.

Nevertheless, there are pending cases in the Second Circuit, of which one of the cases is Barnes & Noble's case, in which I'm personally involved; and the second case involved Title Guaranty, which I imagine Your Honor is familiar with. And those cases are going to go to the

United States Supreme Court.

And I anticipate that I intend to make an application in this case for the Court to hold the hearing in this case until such time as there's been a determination on the application.

I must tell you the Barnes & Noble case is a Region 2 case. Judge Pollack in the Southern District in the Federal District Court has held that case in abeyance.

And he did so first before the Title Guaranty case came down from the Second Circuit, and then on reconsideration again has determined to hold that case in abeyance, requesting that the Board turn over affidavits to the parties in that case, possibly by striking out names of witnesses and trying to meet the requests of all sides so that we can have some information before hearing.

But he has not -- that matter is again before him because the Board is pressing that case. And I anticipate that there will be further litigation in that area.

And it is at least my present intent to move in Federal District Court to seek an adjournment of this hearing until my motion is pressed in that regard.

JUDGE FRIEDMAN: Well, I'm sure there's going to be some response by the General Counsel to these motions. I'd like to hear from him.

MR. BLYER: Excuse me one minute.

MS. HARPER: Could we have just a minute?

JUDGE FRIEDMAN: Sure.

MR. ZISKIN: Could we go off the record a moment?

JUDGE FRIEDMAN: Sure.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

MR. BLYER: Briefly, if I can, Your Honor, with regard to Mr. Ziskin's request under the Freedom of Information Act, the Circuit -- the law in this Circuit at this time is not in his favor. It does not support any stay of this proceeding at this time. It does not support the handing over of any affidavits prior to witness' testifying.

Moreover, the Board, as I understand it, is not in the habit of delaying cases because of a request under the Freedom of Information Act.

Mr. Ziskin had an opportunity months ago to make this request. He only made it recently, I suppose -- I guess inadvertently, from what I understood, to the General Counsel's office rather than the Regional Director's, the Regional Director here.

Of course, the Regional Director will answer within ten working dans and probably sooner.

I don't see any reason why that motion for affidavits under FOIA should preclude us from going on with this hearing now.

JUDGE FRIEDMAN: Before you get to any of the other, is this the end of what you're going to say on this motion?

MR. ZISKIN: Yes.

JUDGE FRIEDMAN: Let me say this, gentlemen, as a reply to you on your motion: it can't be before me yet, as you know.

MR. ZISKIN: Right.

JUDGE FRIEDMAN: I'm just merely apprised of it.

I can tell you now, if the General Counsel turns you down, I'm almost certainly -- I will have to turn you down.

MR. ZISKIN: I understand.

In which event, I would take an interim appeal to the Board.

JUDGE FRIEDMAN: You'll have to take an interim appeal.

MR. ZISKIN: Right.

JUDGE FRIEDMAN: If that's turned down, then you can go to the District Court and get your instruction, if you can.

MR. ZISKIN: That's correct.

JUDGE FRIEDMAN: In the meantime, I am not going to hold the case up. I inform you of that right now.

MR. ZISKIN: I do think that, since more than ten days have passed, I am entitled to a response from the Regional Director on my application so that I can take my next appeal, because --

JUDGE FRIEDMAN: Did you make your application to the right individual to start with?

MR. ZISKIN: Yes.

I've done this more than once.

JUDGE FRIEDMAN: Procedurally this is improper.

MR. ZISKIN: I made the request of the Regional Di[illegible] with copies to Washington in accordance with the appropriate Section 102.117.

And I was somewhat surprised, candidly, to get this letter because it's not the standard letter that I get back from the agency. But I anticipated a pattern letter which I usually get back.

That not being the case --

JUDGE FRIEDMAN: Maybe they ought to change --

MR. ZISKIN: So I must --

JUDGE FRIEDMAN: I'm bound.

MR. ZISKIN: I fully recognize --

JUDGE FRIEDMAN: I sympathize with your position. I'm bound.

MR. ZISKIN: I understand.

JUDGE FRIEDMAN: There's nothing I can do.

MR. ZISKIN: I would like a response from the Regional Director in a timely fashion.

JUDGE FRIEDMAN: I don't know when the Regional Director will be ready to give you his answer. I certainly cannot rule until he does.

MR. ZISKIN: I realize that.

JUDGE FRIEDMAN: With regard to the other motion for the consolidation, so far as the Acme motion is concerned, that has been denied, and I am not in a position at this particular moment to set aside the order of another judge on this matter.

I think that is again a matter of appeal. It's a matter of you can make it to the Board.

So far as the consolidation of other case is concerned, I certainly can't make any ruling until I see the complaint.

MR. BLYER: You have a copy of the complaint?

MS. HARPER: I have not seen that complaint yet either, Your Honor. The complaint was issued, as I understand it, on Friday, and we have not been served as yet. It may be in the mail, but I have not had occasion to see it either.

JUDGE FRIEDMAN: I think, under the circumstances, Mr. Blyer -- I'm sorry, Miss Harper, I didn't mean to interrupt you.

MS. HARPER: I have been informed by Mr. Blyer that there are no allegations of violence, however, and that the issues that are brought into play in this particular complaint have nothing to do with the defense that may be raised under Laura Modes; that there are some problems of ingress or egress or things of that nature; they're all minor. There are no allegations of violence, I'm told. I've been assured that.

And, therefore, I see no reason why that matter should be consolidated with this one, but it ought to go through the normal procedures. It may even be disposed of.

It certainly presents no issue.

Here I think it's being raised purely now by counsel to get an adjournment.

And this has been filed very, very recently, as you can see, whereas the charge in the instant case goes back to the beginning of February, and deals with events that have gone on now for eleven months.

MR. ZISKIN: Your Honor --

MS. HARPER: I see no reason to adjourn it further.

Those before us are very serious. Those in the 8(b)(1)(a) are minor.

And we have not had a chance to even get a copy of the complaint, the bill of particulars.

The General Counsel himself does not urge that it would preclude a bargaining order. And I can see no reason whatsoever to join the two cases and confuse matters.

MR. ZISKIN: If I might, when you look at the complaint, you'll see there are specific allegations of threats of bodily --

MS. HARPER: There's been an allegation of violence? Are you representing -- are you representing that?

Show me the allegation.

MR. ZISKIN: You and I have worked together for three years. I don't have to show you.

JUDGE FRIEDMAN: All right.

Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

MR. BLYER: The position of the General Counsel is that -- and I think this is the main point to be made -- we are very anxious to get this case under way.

This is a serious matter. And you have heard some of the reference to the circumstances that have occurred.

We believe this is a serious matter. The strike itself has been on for eleven months or so, and we've had some unfortunate situations here.

So, that is our position. We are anxious to proceed today on this complaint that is now before you.

It is also very true that we have no objection to the introduction into evidence any defense along the line of Laura Modes.

We don't agree in this case it will be sustained, but we have no objection to the introduction --

JUDGE FRIEDMAN: I would take evidence on that because I'm not certain myself just how the Board would apply to Laura Modes in this instance.

It's true that in Laura Modes there was an original organizing company; it wasn't a union that had been bargaining with the respondent in that case for a rather long period of time.

I don't know of any other cases since then where there has been a bargaining -- where this sort of thing has occurred in an established bargaining relationship.

There may be, because I haven't followed it that closely.

MR. BLYER: Most of the cases, I think, come up in the initial organization company.

JUDGE FRIEDMAN: However, counsel for Respondents may be able to enlighten me on that. I don't know.

But I will allow it.

MR. BLYER: You wouldn't have any objection from me on that score.

JUDGE FRIEDMAN: All right.

MR. BLYER: With regard to the 8(b)(1)(a) complaint, which is -- I now just gave you a copy of -- it did issue Friday, we would have no objection to consolidating this case.

I don't know the position of all the other parties. If they would be willing to waive the ten-day period they have to answer and to include the 8(b)(1)(a) case, I'm not sure, but we would have no objection to it. But, if--

JUDGE FRIEDMAN: I certainly think that the Charging Party in the 8(b)(1)(a) case should have a chance to do its own investigating, although I'm sure this case -- and I'm positive of this -- that everybody knows everything that's happened in this case. Even the newspapers have known it down in Washington.

So, nobody -- I'm sure nobody is surprised or taken without -- by surprise so far as knowledge is concerned.

However, so far as the actual allegations of the complaint, I'm sure Miss Harper has every right in the world to look it over and see what she wants to do in the way of answer and, if she wants particulars, to get particulars.

MR. BLYER: We're anxious to get ahead. We want to go ahead and, of course with your permission, intend to go ahead.

If it can be worked out, we have no objection to the 8(b)(1)(a) case being included. If --

JUDGE FRIEDMAN: I quite frankly, without reading it, would be more or less inclined to consolidate. I would be frank with you, Mr. Blyer.

However, I don't want to interfere with the rights of the Charging Party in this case and the charged party in the other case.

Miss Harper, I'll ask you. How much time do you think you would need?

MS. HARPER: Well, Your Honor, I haven't seen the complaint. I've never been served.

Here we have a complaint that's been in existence for a long time. There have been many adjournments so they can adequately prepare.

I haven't even seen the complaint in this case.

If they had charges, they could have filed them months ago. They waited precisely to the very last minute in order to accomplish this. And General Counsel has issued --

JUDGE FRIEDMAN: Well, that's your allegations.

MS. HARPER: Right.

But I have --

JUDGE FRIEDMAN: I have no way -- I'm not trying to pressure you. I'm just asking you, you know, for information on this.

MS. HARPER: Right.

JUDGE FRIEDMAN: Inasmuch as I haven't taken any ' testimony, how does your office feel about this, I mean, so far as giving the Respondent in the 8(b)(1)(a) case time?

I know you say you're pressing this. If you have no objection to consolidate, heavens, what is your position?

On one hand, you say you have no objection to consolidate; on the other hand, you say you want to press this case now.

MR. BLYER: Our position, then --

JUDGE FRIEDMAN: You're not being fair really in that respect to the Charging Party in this case who is the charged party in the other case.

MR. BLYER: If all parties are unable to consolidate the case at this time, our position is that we go forward on the case before you now, and that all parties be permitted to introduce by way of defense this 8(b)(1)(a) Laura Modes defense.

JUDGE FRIEDMAN: Let me put this -- I'm sorry.

MR. ISRAEL: May I just put the time sequence of context because I think suddenly it's been put all out of context.

The complaint in the instant case was not issued in February. As I understand it, it was issued April 27.

MS. HARPER: If I said -- I don't believe I did --

the charge was filed --

MR. ISRAEL: The complaint was issued April 27, and it's now June 7.

Miss Harper mentioned something about many adjournments. There has been one adjournment granted.

The Acme case, which also involves a strike of eleven months' duration, was put over into July, not upon request of either the attorneys for 810 or the attorneys for Respondents, namely, myself; but upon the Board's instant -- its own motion.

So that there has been no delay. There has been no attempt to push anything over.

And my request, learning this morning for the first time that there is now a hearing scheduled for June 21, which is fourteen days way, obviously is not for the purpose of delaying because I can't gain very much by delaying a case fourteen days.

It seems to me, when you talk about putting something over fourteen days or seven days or even starting it today, if Miss Harper would consent, we wouldn't be gaining anything but time, but certainly we will have moved two actions into one. And, as Mr. Blyer seems to concede, they involve the same parties, the same witnesses, and much of the same evidence.

JUDGE FRIEDMAN: Let me ask you this:

If we were to proceed today, gentlemen, Mr. Blyer, Miss Harper, all of you, if we were to proceed today to start this proceeding, the instant proceeding, when would we get to the point, approximately, where we would involve the people who would be involved in Miss Harper's -- in the case against the Charging Party in this case, in the other case?

MR. BLYER: Not too long down the road, probably.

On cross-examination I guess it would come up. It certainly wouldn't -- under the expanded rules, counsel would be permitted to go into anything that was relevant. And I suppose, when I had a witness --

JUDGE FRIEDMAN: Would it be your very first witness?

MR. BLYER: No.

JUDGE FRIEDMAN: Would it be --

MR. BLYER: In fact, I could arrange so that it could be towards the end. And I think --

JUDGE FRIEDMAN: End of what?

MR. BLYER: I have approximately 30 to 35 witnesses --

JUDGE FRIEDMAN: Toward the end of your presentation of your case?

MR. BLYER: I'd say somewhere around fifteen, eighteen witnesses, I might be able to put it in then.

JUDGE FRIEDMAN: All right.

Then I think that we ought to proceed in this respect.

I will adjourn this matter to give you time, Miss Harper, to prepare your defense in the other case --

MS. HARPER: Adjourn?

JUDGE FRIEDMAN: Yes.

After -- well, here I can do one of two things: I can either look at this other complaint, say, and consolidate it and adjourn it.

We can start this case, get it moving, and then perhaps put it over to give you time to prepare your defense and perhaps at that point -- I don't know, I'd like to look this over myself and see if I'm even inclined to consolidate it.

MR. BLYER: It's our point --

JUDGE FRIEDMAN: My inclination offhand would be to consolidate.

MR. BLYER: You can do this really after you hear this case. You can do after -- we don't have to close this case. You can continue -- we can take all the evidence in this case and keep it open and just proceed when we get to the next case.

JUDGE FRIEDMAN: Mr. Israel makes a very, very good point, and so does Mr. Ziskin; and that is precisely that we don't want to take the same testimony two or three times, at least I know of twice anyway.

MS. HARPER: It may not even involve the same testimony. It may be that that matter can be straightened out.

I cannot see how we can pass on that when we have not even seen the complaint.

JUDGE FRIEDMAN: I'll tell you what we will do. We will commence this case. We can adjourn it, perhaps, give you an opportunity to check your -- you know, the complaint over, Miss Harper, at some convenient point as we go along, at which point perhaps then you can also consent to consolidation.

MS. HARPER: I would think that would be unlikely today.

You're not suggesting that, are you?

JUDGE FRIEDMAN: No.

MS. HARPER: Very well.

JUDGE FRIEDMAN: No.

MS. HARPER: I will certainly look it over --

JUDGE FRIEDMAN: I'll give you time. I'm not trying to force this down your throat, by no means. I don't want to force this down anybody's throat. That's why I'm approaching it with such care. [illegible] everybody here to be given their day in court, as it were.

By the same token, if it's going to involve, and if it could possibly involve, the same -- some of the same testimony, it would be probably consolidated inasmuch as it arises out of the same set of circumstances, I would believe, in other words, the prolonged strike and actions of the strikers or picketers, I presume, that are involved in here on behalf of the Charging Party in this case.

I will say this: that it would seem to me that -- assuming for a moment the Laura Modes defense does not prevail, what then would be the purpose of consolidation?

I mean, I don't know. Let's just for the sake of argument say that the Laura Modes defense wouldn't prevail; what will be gained by the consolidation?

MR. BLYER: Nothing.

MR. ZISKIN: I don't know if I can agree with that, because you have allegations in the complaint that are going to have to be proved.

I'm speaking of the 8(b)(1)(a) complaint now with regard to establishing the collective bargaining history of the parties.

So, you're going to have certain testimony that's going to be introduced the second time in that proceeding, whether or not the Laura Modes defense would prevail in this proceeding.

There are several introductory paragraphs which deal with the history of the parties, including the strike.

The Board has characterized the strike in a certain way, characterizing it as a concerted work stoppage. And there are overtones of whether it's an unfair labor practice strike or whether it could be an economic strike.

So, there are overtones --

JUDGE FRIEDMAN: Does it make any difference in an 8(b)(1)(a) whether it's an economy strike?

MR. ZISKIN: Not for the 8(b)(1)(a) activity, but certainly to go into the relationship of the past history of collective bargaining relationship. That's going to have to be covered, no matter.

And there's going to be testimony about the strike. And the Board contends in its paragraph, as you'll see -- I don't mean to take up a lot of time --

JUDGE FRIEDMAN: That's all right.

MR. ZISKIN: -- alleging the nature of a strike and contending it was a concerted work stoppage, which some parties may or may not agree with. It may become an additional factual issue which will be important.

JUDGE FRIEDMAN: Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

There were four motions before me, and I am going to rule on them in this manner.

With regard to the Acme motion, that is denied.

It has already been decided by Judge Leff. I will not overrule it.

With regard to the motion to consolidate the complaint in this case with the complaint in Case No. 29-CB-2461, which is a complaint against the Charging Party in the instant proceeding, I will try to rule on it within the next 24 to 48 hours.

In the event that I do rule on it to consolidate, General Counsel has off the record informed me that he will not be getting to the matters in this particular -- that will be involved in both proceedings until at least the next two days.

Furthermore, with regard to the motion to consolidate -- I mean, as I said, I will act on it. If I do decide to consolidate the case, I will give the Respondent in the second case, in the CB case, time to investigate, file an answer, and make any motion that he wants to make with regard to the case.

In the event that an adjournment is necessary, in such an event, an adjournment will be given. It may well be that that adjournment will be made to the 21st, which is the day that the second case is set down for at the present time.

I'm not ruling on that particular time -- at the present time, just giving you an idea of where we're going.

With regard to the motion for the affidavits, I have ruled -- I have not ruled on it. I will not rule on it, because it's premature at this particular moment inasmuch as the Regional Director has not acted on it as yet.

With regard to the motion to move this proceeding to a Federal District Court, I have not had any proof or any certainty that there will be any disturbances or any violence or any interference of the type which will not enable us to proceed in this particular hearing room.

If, however, there is any such disturbance, if, however, there is any such interference, I will at that point entertain your motion again, and I will rule on it at that time; and we will order the General Counsel to get us a hearing room where we will have more security and more safety.

At the present time I see no reason to do so.

All right, Mr. Blyer, you may proceed.

MR. BLYER: Thank you.

I'd like to call Mr. Colavito as the first witness.

JUDGE FRIEDMAN: Mr. Colavito, if you will raise your right hand, sir.

Whereupon,

WILLIAM COLAVITO

was called as a witness by the General Counsel and, having been first duly sworn, testified as follows:

JUDGE FRIEDMAN: Please be seated, sir.

Give your full name and address to the reporter.

THE WITNESS: William Colavito, C-o-l-a-v-i-t-o.

JUDGE FRIEDMAN: Just a moment, Mr. Colavito. I just want to address Mr. Ziskin for a moment.

Are there any of my rulings at this time that you want to make an appeal from?

MR. ZISKIN: Your Honor, I am -- I do intend to take an interim appeal from your decision to deny consolidation on the Acme.

I also would have wished that you would have been able to determine whether you could consolidate, and I really would urge that you look at the complaint before Mr. Colavito actually testifies, which might give you an idea that you might want to consolidate the cases at the outset.

Additionally, since my previous application for affidavits was properly submitted to the Regional Director as indicated in the General Counsel's own letter of June 2nd, I -- participating in this hearing with Mr. Colavito testifying, you have determined to proceeding.

But I want the record clearly to indicate that I'm doing so under protest, and that I'm not waiving any right to make a request or continuing my request for affidavits before witnesses testify.

JUDGE FRIEDMAN: I can assure you there will be no waiver.

MR. ZISKIN: As I point out, the General Counsel in its own letter recognized that I had properly made my request to the Regional Director pursuant to 102.11(c)(1) of the Board's rules and regulations, and the Regional Director has chosen not to respond at this point.

JUDGE FRIEDMAN: Has the ten days to respond expired?

MR. ZISKIN: Yes.

JUDGE FRIEDMAN: Is there any reason or explanation for this, Mr. Blyer, that you know of?

MR. BLYER: I know nothing about it, Your Honor, and I will check.

I'm very surprised if in fact this has occurred.

JUDGE FRIEDMAN: Suppose we do this, gentlemen.

It's now 20 minutes to one. Let's adjourn this matter until 1:45, give Mr. Blyer a chance to talk to the Regional Director, and give me a chance to look at the complaint in the other case over, and it may well be that I'll change my mind.

Mr. Colavito, you may step down.

(Whereupon, at 12:40 o'clock p.m., the hearing was recessed, to reconvene at 1:45 o'clock p.m., the same day.)

AFTERNOON SESSION

JUDGE FRIEDMAN: On the record, gentlemen.

I had an opportunity to read over the complaint in the case of 29-CB-2461, which is the 8(b)(1)(a) complaint against the Charging Union in the instant proceeding.

And there are certainly a number of the allegations which would be exactly the same -- which are exactly the same, that is, with regard to jurisdiction, the Association, the strike, that withdrawal -- alleged withdrawal, so forth and so on.

Whether or not the threat of violence -- there's no violence alleged, as I read it. There's merely a threat of violence.

Whether or not a threat of violence would be sufficient to sustain -- assuming a Laura Modes defense were applicable, whether or not a threat of violence would be sufficient to sustain a Laura Modes defense, or the destruction of property would be sufficient, is something that I myself at this point can't answer.

I don't think anybody in this room can actually answer that. I don't think there have been any cases.

As I recall, the Board has been very sparing in its application of Laura Modes.

MS. HARPER: The Donovan case, as a matter of fact, seems to indicate to the contrary.

JUDGE FRIEDMAN: I didn't hear you.

MS. HARPER: The Donovan case -- Are you familiar with that case?

JUDGE FRIEDMAN: I don't --

MS. HARPER: Which made perfectly clear there had to appear a pervasive factual situation of violence before the Board would ever consider not granting a bargaining order.

JUDGE FRIEDMAN: Yes.

MS. HARPER: The situation was far and beyond anything that's even alleged here, and the Board refused to --

JUDGE FRIEDMAN: I know.

But I'm sure that the Respondents here and the Party to the Contract are going far beyond - in their Laura Modes defense, far beyond the events alleged in this CB complaint.

MS. HARPER: They may.

JUDGE FRIEDMAN: I'm sure they intend to do that, because I don't think they're trying Laura Modes on this tamer group of allegations as this.

MR. ZISKIN: I tried the Donovan case, so I'm fully aware of the Laura Modes case as this Board most recently considered it.

So, I know what's necessary to establish -- and the Board of course hasn't gone forward on all of the allegations that we raised.

And I'm not sure that every incident or alleged violation was presented to the Region in connection with its investigation of the particular charge before it.

MS. HARPER: Nevertheless, the facts were very extreme there, far and away anything that's presented in this case --

JUDGE FRIEDMAN: The Donovan case?

MR. ZISKIN: Yes.

MS. HARPER: Certainly beyond --

JUDGE FRIEDMAN: I remember Laura Modes case. They actually came in and they beat the proprietor up. He wouldn't sign a contract, and they came in --but I still can't rule that Laura Modes is not applicable here, and I won't rule.

But I could believe that these cases should be consolidated.

MS. HARPER: As I say, I do feel that we do need some time, and I must consult with my clients --

JUDGE FRIEDMAN: You can have the time.

MS. HARPER: Right.

JUDGE FRIEDMAN: And I will, under those circumstances, however, I would like to get rid of a couple of other motions before we do anything else.

Mr. Blyer, do you have any report on the motion that

Mr. Ziskin made with regard to the affidavits?

MR. BLYER: Yes, Your Honor.

Again I reiterate the FOIA case has nothing to do with stopping this hearing.

I think we should go ahead. I think it's irrelevant to whether or not we should proceed in this case.

But, in any event, the indication is that the letter was received seven working days ago, that it's dated May 26 or 27, I can't recall --

MR. ZISKIN: 25th.

MR. BLYER: It's stamped in our office the 26th or 27th.

Even if it was the 25th, it's still not ten working days. You recall there was a holiday between. And the Regional Director will comply with the request within the ten days.

In fact, I brought to his attention, and he'll probably get it out today.

JUDGE FRIEDMAN: All right.

Inasmuch as I have now -- now, that takes care of that.

I'd like to ask you one thing, Mr. Blyer, and I had the opinion of some of you other gentlemen, perhaps you can enlighten me.

Let's assume for the moment that the Regional Director doesn't handle this, or let's assume he is thinking of acting; does that prevent me at this point from denying the motion if he makes it before me, or is it a separate motion entirely?

I mean, I'm thinking now in terms of the technicalities of the matter. I don't want to interfere with the Regional Director or overrule a Regional Director in any way, because I don't know what he's going to do.

He may surprise me and grant the motion.

MR. BLYER: I would think that it's separate --

JUDGE FRIEDMAN: I think I have to wait. I think I'm obliged to wait.

MR. ZISKIN: My recollection of the statute is that it's addressed to the Regional Director.

JUDGE FRIEDMAN: I think my ruling that you were premature so far as the motion to me was concerned was a correct ruling.

I want to -- and the reason I want that is because I want to have a complete record in the event you want to go up for appeal. That's for your own protection.

MR. ZISKIN: I appreciate that.

MR. BLYER: I'm not sure, under the rules and regulations everyone here, I suppose, is bound to follow, a motion to produce the affidavits at this point, under the rules and regulations, you would be precluded from doing so.

I think the motion in the FOIA is a separate line, and that has really nothing to do with you.

JUDGE FRIEDMAN: I'm not procedurally --

MR. BLYER: As Mr. Ziskin pointed out, I think the statute provides that the issue -- and the rules and regs provides that the motion under FOIA be made to the Regional Director and then to the General Counsel, and that it would be improper if it was made to you.

MR. ZISKIN: Right.

MR. BLYER: So that your only decision would be under the rules and regs --

JUDGE FRIEDMAN: I don't know whether it's improper for me.

These motions have been made before me a number of times where applications have been made, and I've ruled against the applying party.

MR. BLYER: I don't think you have to worry about FOIA. I think your concern is the rules and regulations.

JUDGE FRIEDMAN: Well, at any rate, I'm not going to rule on it now.

And, so far as the consolidation motion is concerned, I'm granting the motion to consolidate. And, in view of the fact that --

MS. HARPER: I didn't follow you on your motion.

You're granting the motion to consolidate, did you say?

JUDGE FRIEDMAN: I'm granting the motion, Mr. Israel and Mr. Ziskin's motion to consolidate your case, the CB case, with this case, yes.

MS. HARPER: Well, I would like -- I would respectfully request, if you reserve decision on that until such time as I get a chance to read the papers, consult with my client, and come back with some position and some argument --

JUDGE FRIEDMAN: As I told you before --

MS. HARPER: I would ask you to defer ruling on the motion to consolidate until such time as I can come back --

JUDGE FRIEDMAN: I will withdraw my ruling then and give you an opportunity to do that. But then I will have to proceed with this case.

MS. HARPER: I want you to proceed with this case. I'm very anxious for you to proceed with this case.

JUDGE FRIEDMAN: I don't want to prejudice the Respondents either.

MS. HARPER: I can't see how they would be prejudiced, because they have to go fully ahead anyway with this case, and they are going to present it as part of their defense.

Now, if you should determine to consolidate at the end of the hearing, then the General Counsel might go forward with some additional material. But they'll be prejudiced in no way because they raised it on defense anyway, and they'd be obliged to go through all of the matter that we'd be going through in either event.

And, if you should decide at the end not to consolidate, then they certainly haven't lost anything. So, I can't see how they're prejudiced in any way.

I'm sure they're not going to withdraw their defense based on your motion --

JUDGE FRIEDMAN: No. Only Mr. Ziskin's client is the Charging Party in the other case anyway.

The rest of the Respondents are not involved actually in the other case.

MS. HARPER: Right.

And he's going to raise that as a defense.

MR. ZISKIN: I presume Mr. Israel is going to raise it as a defense also.

MS. HARPER: I have no idea.

None of the answers raised it certainly.

If they were going to frame the issues, it was never framed in any answers that were put out.

JUDGE FRIEDMAN: The denial of the --

MS. HARPER: In any event, if they're going to raise it as an answer, they're going to do it whether they consolidate or not. So, they're not prejudiced.

JUDGE FRIEDMAN: I want to do it cleanly.

You can understand I either want to consolidate or I'm not going to consolidate.

I don't see that it's going to make any difference if I wait to order consolidation a week from now or if I order it now.

MS. HARPER: Just that I feel that I need some time, having been served just before lunch with papers. I am normally entitled to ten days to answer. I'm entitled to time to discuss with my client what the facts actually are. I am entitled to a bill of particulars.

I think that you ought to have some of that material, which I will pursue with great haste, I might say. I'm certainly not anxious to delay in any way.

I then have, after I have had an opportunity to correlate some of this material, to come back to you and either make a motion or consent either way.

But I don't feel at this point, where I haven't actively, formally been even served with papers, that you ought to consolidate this proceeding, especially as they can't possibly be prejudiced.

MR. ISRAEL: Well, it seems to me the problem arises because of some almost undefined belief that General Counsel will be prejudiced if the matter is held to the 21st of June.

In other words, as Mr. Ziskin pointed out, all these matters, all these problems that everyone seems to be confronted with, fall by the wayside if you simply put that matter over to the 21st of June, and prior to the 21st of June make a determination as to whether there will be a consolidation or not.

If you consolidate, then we all proceed, not piecemeal, on the 21st.

If you will elect not to consolidate, then, if there are going to be interim appeals by Mr. Ziskin or myself, we will take them.

That would seem to me to be the logical way to proceed.

Obviously I am going to feel prejudiced if in fact you do not elect to consolidate the two cases. Then I say we're going to have a total duplication.

JUDGE FRIEDMAN: The only one that will be prejudiced will be the taxpayers and the Government.

It doesn't matter because even -- let's assume -- aside from the actual acts alleged in this CB case, every other item in the complaint will be ironed out certainly in this case. You wouldn't be prejudiced in that respect.

MR. ISRAEL: Just with respect to the duplication, the overlapping of the two cases. I am not --

JUDGE FRIEDMAN: Only in one sense, and that is the actual -- the rest of the matter will be almost virtually stipulated anyway.

MR. ZISKIN: That's not necessarily so.

If we have a different Administrative Law Judge, I may not be willing to stipulate the facts. I really mean that.

And I don't know what other -- other parties' positions they'll take.

I think we really want one Administrative Law Judge to hear the entire case. He gets the flavor of the case. He knows what it's about. He sees the whole picture.

It's most difficult to be placed in the potential position of having two or three Administrative Law Judges pass upon the same factual situation or, if not exactly the same factual situation, partially the same factual situation.

And I don't think that that is in the best interest of anyone in this hearing room, to have what may be conflicting decisions as to testimony.

And I could tell you frankly I would not be prepared to stipulate a transcript to another Administrative Law Judge, just as I don't ever agree to stipulate to a transcript from a Federal District Court Judge to an Administrative Law Judge in a 10-L proceeding, because I really believe I lose --

JUDGE FRIEDMAN: That doesn't bother me.

MR. ZISKIN: -- the parties lose their opportunity to have the Judge see the witness and pass on the demeanor and everything else.

MS. HARPER: The material that is duplicative is very, very little, because we don't have to go into this entire background in order to sustain the charge here. It's completely different.

And I would like to point out one additional thing. There are only four employers that are involved in that charge, and the case here involves some 18 or 20.

And I think that they're trying to have the tail wag the dog here rather than the other way around.

JUDGE FRIEDMAN: Well --

MS. HARPER: I suggest as we would be prejudiced by delay -- we've been prejudiced to the extent of some eleven months -- that we ought to just proceed today.

JUDGE FRIEDMAN: Today is what, the seventh?

MR. ZISKIN: Yes.

JUDGE FRIEDMAN: Fourteen days isn't going --

MS. HARPER: I feel we've been very seriously prejudiced by the delay so far.

I cannot see how they are prejudiced in any way.

JUDGE FRIEDMAN: I don't see what delay there has been.

I don't think there's been that much delay.

MS. HARPER: Well --

JUDGE FRIEDMAN: The delay may have been in the issuance of the complaint. I don't know about that.

What I'm saying is there's been no delay that I can see to this point of any great length.

I realize this is a very serious situation. I'm not living in a vacuum. I've read the papers too. I know what's going on so far as what's --

MS. HARPER: The items that occurred, the violations here, which are self-evasive and so flagrant, from our point of view, should be corrected. They go back some eleven months.

The charge was filed in February.

I can't see any form of prejudice to anybody by proceeding in the next few days. No way.

Certainly as to the material of Mr. Colavito, they'd have to go through --

JUDGE FRIEDMAN: I intend to take some of the testimony.

MS. HARPER: Defer ruling, as you indicated initially you might, until we've had a chance to think this thing through, and come back with whatever arguments we have; we may consent. I don't know.

But I need some time. I don't think -- I haven't been given any.

JUDGE FRIEDMAN: What do you say, Mr. Blyer?

MR. BLYER: Well, I'm anxious to get started, and I think, if you give Mrs. Harper another day, I think --

JUDGE FRIEDMAN: I'm perfectly willing to give her more than a couple of days -- a day or two. I have no intention of forcing her on this other matter.

MR. BLYER: I would then concur --

JUDGE FRIEDMAN: Whether I consolidate or not.

MR. BLYER: I'm saying I tend to agree with her. It might be wise --

JUDGE FRIEDMAN: If there's a possibility that she may consent, then it would be foolish for me to consolidate, wouldn't it?

MR. BLYER: That's what --

JUDGE FRIEDMAN: I realize that may be a very remote possibility. They might be able to settle it without --

MR. BLYER: We've talked about it.

JUDGE FRIEDMAN: Under those circumstances, all right, let's proceed, and we'll see where we go.

If, when we get to the matter which is going to involve both of these proceedings, so far as the violence and the picket line, this conduct, is concerned, I promise you at that point we'll make a ruling and we'll --

MS. HARPER: Thank you very much.

MR. BLYER: Thank you.

JUDGE FRIEDMAN: The only motion that I've really denied is the Acme motion at this stage.

And I've deferred the motion to move to another hearing room. I've deferred the motion to consolidate. And I've deferred the motion to furnish the affidavits.

So, let's move on.

MR. ISRAEL: I would ask that these individuals, who I assume are potential witnesses -- I don't know who they are --

JUDGE FRIEDMAN: You want to separate the witnesses?

MR. ISRAE: Yes.

MS. HARPER: I don't know whether they are or not.

JUDGE FRIEDMAN: Mr. Blyer would know.

MR. BLYER: Mr. Schifano is not, and Mrs. Ruth Dias is not, and Mr. McCarthy is not. Everyone is --

JUDGE FRIEDMAN: Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

You may proceed with your examination of Mr. Colavito.

Who is this gentleman?

MR. BLYER: He's with the office.

JUDGE FRIEDMAN: On the separation, before we go ahead, gentlemen, and I just wanted to say I'm not going to police this. It's up to you people to police it.

If either of the parties -- that goes both ways -- sees any it -- or potential witness in the hearing room at any time, please call it to my attention.

MS. HARPER: I will make the assumption it would apply to both, any of your witnesses would likewise be sequestered.

DIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Colavito, what position do you hold with Local 455 --

JUDGE FRIEDMAN: One moment, please. One moment. I'm sorry to interrupt.

Are any of those witnesses the 8(3)s?

MR. BLYER: No.

JUDGE FRIEDMAN: All right.

MR. SPIGNER: I didn't hear that question.

JUDGE FRIEDMAN: I said, are any of those witnesses the alleged dischargees.

If they are, then they're entitled to sit in.

Go ahead.

Q (By Mr. Blyer) What position do you hold with Local 455?

A I'm the president of the local.

Q Sir, how long have you been the president?

A Twelve years.

Q Now, with regard to the 18 employers named in this complaint, what relationship, if any, did Local 455 have with those employers?

A Well, we had collective bargaining agreements with those people over a period of time, anywheres from a few years to about thirty-five, forty years.

We represented their employees for the purposes of collective bargaining, for wages, conditions, and --

MR. SPIGNER: I can't hear you, Mr. Colavito.

JUDGE FRIEDMAN: You'll have to speak up, Mr. Colavito. Speak as loudly as you possibly can.

THE WITNESS: All right.

A (continuing) We represented the employees, and we had contracts with these employers over many years.

Q Now, what type of contracts were these?

A These are contracts that represented the production and maintenance employees and their plant clericals.

Q When I use the word "type," was it many employers involved in one contract, or were there individual contracts, or what?

A They were individual contracts.

MR. BLYER: Your Honor, can we go off the record a moment?

JUDGE FRIEDMAN: Sure.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

Q (By Mr. Blyer) With regard to the 18 employers named in the complaint that you've testified to about having individual contracts with, what was the last contract period that those contracts covered?

A July 1, '73 to June 30, '75.

Q Is that the case for all 18?

A Yes.

Q Now, with regard to all 18, what unit of employees is covered in all those contracts?

A Production and maintenance.

MR. ISRAEL: I object.

Those contracts speak for themselves.

MR. BLYER: Can I have this marked, Your Honor, as General Counsel Exhibit No. 2?

(Document above referred to marked General Counsel's Exhibit No. 2 for identification.)

JUDGE FRIEDMAN: Are you going to identify each signature or contract?

MR. BLYER: I will, Your Honor, yes.

Q (By Mr. Blyer) Mr. Colavito, I show you what's been marked for identification as General Counsel Exhibit No. 2.

Can you identify that, please (handing document to witness)?

A This is the contract, two-year contract, starting July 1, '73, expiring June 30, '75, with Roma Iron Works, Inc.

Q What company?

A Roma Iron Works.

Q Okay.

And what -- Can you take a look at the last page and identify the signatures on the last page?

A This --

Q Who signed on behalf of the Union?

A Myself, recording secretary. And, for the company, Edward Romanelli.

Q Now, with regard to the other 17 employers named in the complaint, Mr. Colavito, how does that contract relate to those other -- the 17 other contracts that you have with the employers named in the complaint?

A It would be the same agreement.

They had a standard independent agreement, what we call a standard independent agreement.

Q Are there any changes in those agreements from the one before you?

A I don't believe so. I think they're all identically the same.

MR. BLYER: May we go off the record, Your Honor?

JUDGE FRIEDMAN: Yes.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

MR. BLYER: Can I have this marked as GC-3?

(Document above referred to marked General Counsel's Exhibit No. 3 for identification.)

Q (By Mr. Blyer) Mr. Colavito, I hand you what's been marked for identification as General Counsel's 3.

Can you identify that two-page document (handing document to witness)?

A It's a standard independent agreement with Achilles Construction Corporation of Brooklyn, same effective dates, same expiring dates, two-year agreement, signed by myself, recording secretary, and Victor Braunstein, I believe, for the company.

Q Would you spell that last name?

A I don't know if it's B-l- or B-r-a-u-n-s-t-e-i-n.

MR. BLYER: Why don't we get these all marked at the same time?

Mark these GC-4 and --

JUDGE FRIEDMAN: While he marks them, we might as well take a little recess.

(Documents above referred to marked General Counsel's Exhibits Nos. 4 through 19 inclusive for identification.)

Q (By Mr. Blyer) Mr. Colavito, I hand you what's been marked for identification as GC Exhibit No. 4 through 19.

If you would, look through them and just tell me what they are, please (handing documents to witness).

JUDGE FRIEDMAN: Name them, please each one, as you go on.

A S. Cervenka and Sons.

Q That's GC-4 for identification?

A GC-4.

JUDGE FRIEDMAN: Who is that?

THE WITNESS: S. Cervenka, C-e-r-v-e-n-k-a and Son.

JUDGE FRIEDMAN: All right.

A (continuing) There's Long Island Steel Products. That's number 5.

JUDGE FRIEDMAN: Number 5?

THE WITNESS: Yes. Long Island Steel Products, number 5.

A (continuing) Number 6 is Mohawk Steel Fabricators. Number 7 is G. Zaffino and Sons.

JUDGE FRIEDMAN: How is that spelled?

THE WITNESS: Z-a-f-f-i-n-o.

JUDGE FRIEDMAN: Zaffino.

A (continuing) Number 8, Melto Metal Products Company. Number 9, Trojan Steel Corporation. Number 10, Peelle Company.

JUDGE FRIEDMAN: I don't see that.

THE WITNESS: P-e- --

JUDGE FRIEDMAN: P-e double l-e?

THE WITNESS: Right.

A (continuing) Number 11, Paxton Metalcraft Corp.

Number 12, Koenig Iron Works.

13, Ikenson Iron Works.

JUDGE FRIEDMAN: 13 is who?

THE WITNESS: Ikenson. I-k- --

JUDGE FRIEDMAN: I see.

A (continuing) 14, Roman, R-o-m-a-n Iron Works.

15, Kuno, K-u-n-o, Steel Products Corp.

16, Greenpoint Ornamental and Structural Iron Works.

17, Heuser Iron Works, H-e-u-s-e-r.

18, Spigner and Sons Structural Steel Corp.

JUDGE FRIEDMAN: Who is that?

THE WITNESS: Spigner, S-p-i-g-n-e-r.

A (continuing) And 19, Master Iron Craft Corp.

Q Now, with regard to all 18 of those documents that are in front of you, can you tell me what they are?

A Well, they're contracts, expired June 30, 1975, contracts with Local 455.

Q And what unit of employees were covered by all those contracts?

A Production and maintenance and including the clerical employees.

Q What type of clerical employees?

A Plant clericals.

Q And do each one of those contracts have a union security provision?

A Yes.

Q And, to your recollection, is there any difference between what's already in evidence as General Counsel's Exhibit No. 2, the Roma contract, from the other 17?

A There might be a minor difference here and there.

Peelle may have another classification, you know, another classification with two or three employees. Might be a small minor difference in one or two plants.

MR. BLYER: Your Honor, I offer what's been marked for identification as General Counsel's Exhibits Nos. 3 through 19.

MR. SPIGNER: Offered as what? As a contract, or offered just as face pages --

MR. BLYER: Contracts.

MR. SPIGNER: I object.

As I understand what's been presented and identified by the witness have been signature pages; and, by the witness' own admission, there are variances, he says slight variances, in the contract, at least one.

I object to the introduction of these signature pages as the contracts.

MR. ISPAEL: Your Honor, I would join in that objection.

I was under the impression, having been told by Mr. Blyer that the contracts were identical, on that basis I would stipulate to admit the signature pages as being the first and last pages of identical contracts.

But, to the extent there is now an admission that the contracts are not the same, I would object.

I think that would become vitally significant later in the case, the fact these contracts are not identical.

MR. BLYER: Your Honor, at the present time, I'll withdraw my motion to introduce these documents in evidence, and we'll provide the full contracts.

JUDGE FRIEDMAN: All right.

We'll leave the numbers, the same numbers, and you can supply the full contracts.

MR. BLYER: Okay.

MR. SPIGNER: We have 19 numbers.

JUDGE FRIEDMAN: The first were the formal papers.

MR. SPIGNER: Oh, I see.

Q (By Mr. Blyer) Now, Mr. Colavito, did there come a time on or about April 8th of 1975 that the Local 455 sent letters to various employers? Do you recall that?

A Yes.

Q And who did it send those letters to?

A All employers whose contracts expired in June 30, 1975.

MR. BLYER: May I have this marked as General Counsel Exhibit No. 20?

(Document above referred to marked General Counsel's Exhibit No. 20 for identification.)

Q (By Mr. Blyer) Mr. Colavito, I hand you what's been marked for identification as General Counsel's Exhibit No. 20.

Can you identify that, please (handing document to witness)?

A It's a letter from our local union to -- form letter sent out to all the companies whose contracts expired at June 30, that this notice to terminate the current contract, and as soon as enough evidence in advance for the purpose of giving advance notice so we can terminate such and sit down and collective bargain.

MR. BLYER: Your Honor, I offer this as General Counsel's Exhibit No. 20.

JUDGE FRIEDMAN: Is there any objection to this?

MR. SPIGNER: Yes, Your Honor, there is.

Do I understand you're offering this letter to evidence that the letters were sent and returned receipts were also received, because the letters indicate they were sent certified mail, return receipt.

So, is the letter being offered proof that the return receipts were --

MR. BLYER: Look through it.

MR. SPIGNER: Are you introducing the receipts separate or the letter by itself?

MR. BLYER: Just the letter.

MR. SPIGNER: Without the receipts?

MR. BLYER: Just that the letter was sent.

MR. SPIGNER: No objection.

JUDGE FRIEDMAN: All right.

Received.

(Document heretofore marked General Counsel's Exhibit No. 20 received in evidence.)

MR. BLYER: Off the record, Your Honor.

JUDGE FRIEDMAN: Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

MR. BLYER: I propose the following stipulation:

That, on April 9, 1976, 16 of the 18 employers named in the charge, excluding Spigner and Sons and Melto Metal, were sent what's been introduced into evidence as General Counsel's 20, and received General Counsel's 20 on or about April 10th of 1976.

Any problem? That's the stipulation, Your Honor.

JUDGE FRIEDMAN: All right.

Is it agreed, gentlemen?

MR. ISRAEL: Yes.

MR. SPIGNER: Yes.

MR. ZISKIN: Yes.

JUDGE FRIEDMAN: Received.

MR. BLYER: I'd like this marked as GC-21.

JUDGE FRIEDMAN: Better mark it 21(a), (b) --

MR. BLYER: Just one.

JUDGE FRIEDMAN: Just putting in one?

MR. BLYER: Yes.

(Document above referred to marked General Counsel's Exhibit No. 21 for identification.)

JUDGE FRIEDMAN: Mr. Spigner, are you -- just by way of trying to straighten the record, are you contending that your client never received notice of termination?

MR. SPIGNER: I'm --

JUDGE FRIEDMAN: They didn't receive timely notice of termination?

MR. SPIGNER: Yes.

JUDGE FRIEDMAN: You are.

MR. SPIGNER: Yes.

JUDGE FRIEDMAN: All right.

MR. SPIGNER: Off the record.

I think the reason will become apparent later on, because our --

JUDGE FRIEDMAN: I'm not criticizing; I'm just asking.

Q (By Mr. Blyer) Mr. Colavito, I show you what's been marked for identification as General Counsel Exhibit No. 21.

Can you identify that (handing document to witness)?

A It's a receipt for certified mail addressed to Spigner and Sons Constructural Steel Corporation, 342 Metropolitan Avenue, New York, sent by the Shopmen's Local Union and processed through the mails.

Q And where was that document obtained?

A From the post office.

Q Where did I get it from?

A From our office, from Local 455's office.

MR. BLYER: Your Honor, I offer this as General Counsel's Exhibit No. 21.

JUDGE FRIEDMAN: I'll take it, but I'll take it subject to whatever is printed on the document.

All right, it's received.

(Document heretofore marked General Counsel's Exhibit No. 21 received in evidence.)

Q (By Mr. Blyer) With Melto Metal, was an April 8th letter like the one that's in evidence as General Counsel No. 20 sent to Melto?

A Yes, it was.

Q Did you ever hear -- withdrawn, please.

Now, do you recall receiving a letter on or about April 21 from Irving Spigner?

A Yes.

MR. BLYER: Your Honor, I'd like to have this marked for identification as General Counsel Exhibit No. 22.

(Document above referred to marked General Counsel's Exhibit No. 22 for identification.)

Q (By Mr. Blyer) Mr. Colavito, can you identify what's been marked for identification as General Counsel Exhibit No. 22 (handing document to witness)?

A It's a letter from Irving Spigner, president of the Independent Association of Steel Fabricators, listing some 25 companies under contract with 455, and that the Association will represent these companies. And it's in response to our letter of notification that we sent to all these companies; they've authorized the Association to represent them.

Q Thank you.

MR. BLYER: Your Honor, I offer that as GC-22.

I think I've offered it, Your Honor, as GC-22.

JUDGE FRIEDMAN: I'm waiting. Mr. Spigner is still looking it over.

Are there any objections to this?

MR. ZISKIN: No objection.

JUDGE FRIEDMAN: Mr. Spigner?

(Mr. Spigner nods head.)

JUDGE FRIEDMAN: All right.

Received.

MR. BLYER: Thank you.

JUDGE FRIEDMAN: What's the date of the letter?

MR. SPIGNER: 21st of April.

(Document heretofore marked General Counsel's Exhibit No. 22 received in evidence.)

Q (By Mr. Blyer) In connection with this letter of April 21, 1976 --

MR. SPIGNER: '75, you mean.

JUDGE FRIEDMAN: '75.

MR. BLYER: '75, I'm sorry.

Q -- did the union respond to that letter?

A Yes, we did.

Q How did it respond? In letter or by -- verbally or both, or what?

A We sent a letter.

MR. BLYER: May I have this marked, please, as GC-23?

(Document above referred to marked General Counsel's Exhibit No. 23 for identification.)

Q (By Mr. Blyer) Mr. Colavito, I hand you what's been marked for identification as General Counsel Exhibit No. 23.

Can you identify that document (handing document to witness)?

A It's a letter to Independent Association of Steel Fabricators.

Q From who?

A From our office, John Zito, financial secretary.

Q That's all. Thank you.

MR. BLYER: Your Honor, I offer this as GC-23.

JUDGE FRIEDMAN: I would imagine Respondents all have copies of these?

If you haven't, I hope you will supply them.

MR. BLYER: I will supply them, Your Honor, yes.

I made two or three of each copy.

MR. SPIGNER: Are we still dealing with 23?

JUDGE FRIEDMAN: Yes, Mr. Spigner.

All right, it's received.

(Document heretofore marked General Counsel's Exhibit No. 23 received in evidence.)

Q (By Mr. Blyer) Now, after sending that letter of May 8, 1975, did you get any response to that letter?

A We did.

Q What did you get? What kind of response?

A Got a letter from Irving Spigner, I believe, the Association. Not in response to the letter, but we received a letter from -- I believe it dealt with the question of they would want to set up meetings and they would get the authorizations for us.

Q Do you recall sending another letter to Mr. Irving Spigner on or about June 6th of '75?

A Yes.

MR. BLYER: May I have this marked, please, as GC-24?

(Document above referred to marked General Counsel's Exhibit No. 24 for identification.)

Q (By Mr. Blyer) Can you identify that, Mr. Colavito, what I'm handing you, which has been marked for identification as General Counsel Exhibit No. 24 (handing document to witness)/

A A letter to the Association addressed to Mr. Irving Spigner.

Q From whom?

A From our office, myself.

Q Thank you.

MR. BLYER: Your Honor, I offer what's been marked for identification as GC-24 into evidence.

MR. SPIGNER: May I have a moment with this, please, Mr. Blyer?

MR. BLYER: Sure.

MR. SPIGNER: I would like to read it.

MR. ZISKIN: Could I just see it?

MR. BLYER: Sorry. I should have made more copies.

JUDGE FRIEDMAN: Are there any objections?

(No response.)

JUDGE FRIEDMAN: Received.

(Document heretofore marked General Counsel's Exhibit No. 24 received in evidence.)

JUDGE FRIEDMAN: That was 25?

MR. BLYER: That was 24, Your Honor.

Q (By Mr. Blyer) Mr. Colavito, when was it that bargaining negotiations began with the Association?

A June 16th.

Q Of what year, sir?

A 1975.

Q And who bargained on behalf of the Union, the individuals?

A It was myself and Kenneth Mannsmann representing the Union.

MR. SPIGNER: What was that name, please?

THE WITNESS: Kenneth Mannsmann.

MR. SPIGNER: Mannsmann?

MR. BLYER: I'd like to spell it for the record. M-a double n-s-m-a-n-n.

Q And on behalf of the Association who was bargaining on behalf of them?

A It was Irving Spigner, Doyle from Brakewell, Shiner from Master Iron, Peelle from Peelle, and Udyess from Bay Iron.

Q Mr. Udyess spells his name U-d-y-e-s-s?

A Yes.

Q Mr. Irving Spigner, what firm is he affiliated with?

A Irving -- Spigner and Sons.

MR. SPIGNER: Was that question what firm he is affiliated with, or was?

MR. BLYER: The question is he affiliated with.

THE WITNESS: At present?

MR. BLYER: I withdraw the question.

Q At the time, what firm was he affiliated with?

A Spigner and Sons.

Q Now, can you tell me what happened at this first bargaining session on June 16th of '75?

A We asked for authorizations that we had requested a couple of times.

The response was that they're in the process of collecting them. They're waiting until they get them all at one time to give it to us on the authorizations, and they said they had a few more companies that they wanted to add to the authorization list.

And one of the companies was present, Balfour, Balfour Door.

In fact, he was placed on the committee -- the name I left off -- and a few other companies -- and not including the original 25 list.

Q Now, did you receive at this meeting the authorizations that you had requested?

A No. We didn't receive any at all. They said they would hold off until they gather them all together, and they would get them to us for the next meeting.

Q Did Mr. Irving Spigner make any representations with regard to the employers that were in the Association?

A Any representation? He said they were authorized to represent the 25, plus a number of additional ones, Balfour being one of them. I think three or four other companies he mentioned.

Q Now, with regard to the request to include Balfour as part of the Association, did the Union make a response to that request?

A Well, we said at the meeting we thought there might be a problem about Balfour being -- their bargaining for Balfour, because I believe we had started negotiations with that company. And I would check it out and we would get back to them.

And eventually we did send a letter to the company saying that we had started negotiations, and therefore we did not recognize them as being covered under their authorization.

MR. BLYER: Your Honor, I'd like to have this document marked as GC-25.

(Document above referred to marked General Counsel's Exhibit No. 25 for identification.)

Q (By Mr. Blyer) Mr. Colavito, I hand you what's been marked for identification as General Counsel Exhibit No. 25.

Can you identify that document (handing document to witness)?

A It's a letter from myself to the Independent Association dated June 18, 1975, in relation to Balfour saying that --

Q That's good enough. Thank you, Mr. Colavito.

MR. BLYER: Your Honor, I offer what's been marked for identification as GC-25 into evidence.

MR. ISRAEL: Objection to that document, Your Honor, on the grounds of relevance.

I don't see that Balfour is one of the parties to this proceeding. I don't know what it has to do with this proceeding.

MR. BLYER: Well, Your Honor, I think for clarification purposes you're going to need it.

You'll see that, if I may, that, as negotiations whent on and as conversations went on, the Independent Association asked to have different employers in the Association.

Union made a response to some, saying yes, some, to others, no; but also in some respects the Association didn't seem to have responded to the Union's denial.

And, as months went by, you'll see that documents continue to include certain employers in the Association that the Union never agreed to be part of that Association.

And it's our position that there were 28 employers in the Association. I don't know what the position of counsel for the Association is.

But certain documents later suggest that there are other employers other than the 28.

If I could get a stipulation now that Balfour and three other firms are not part of the Association, I think we can do without these documents.

MR. ISRAEL: I don't know what it has to do with the case.

MR. BLYER: All my stipulation is saying, are you willing to stipulate that the Association did not include the firms of Balfour, Weatherguard, Esco, and Herbert A. Penner & Company?

MR. ISRAEL: I'm not willing to stipulate if it has nothing to do with the case and with the pleadings.

MR. BLYER: I'm just trying to explain why I thought it was important to the case.

If I can state it more briefly, it's our position there are 28 employers of the Association, Association-wide unit, and that the 28 employers do not include certain employers that someone reading these documents and listening to this evidence might think are included.

You're going to see future documents coming from the Association with names of firms that are not in the

Association.

I'm trying to show that the Union never agreed to have these firms in the Association.

MS. HARPER: Not within the unit, you mean?

JUDGE FRIEDMAN: I'll take it for that purpose. Overruled.

No. 25 has been received.

(Document heretofore marked General Counsel's Exhibit No. 25 received in evidence.)

Q (By Mr. Blyer) Mr. Colavito, at this first bargaining session, or perhaps at a second one, did the -- were there any other employers that the Association attempted to include as part of the Association and as part of the bargaining with you?

A Yes. They mentioned a few more names.

Q Do you remember the firms, the names of other firms that they wanted to include as part of the Association for bargaining purposes?

A Esco, Penner, I believe, Weatherguard.

Q Now, with regard to those three, did the Union make a response to the request to include these three in the bargaining unit?

A I said we would investigate, if -- if we had started bargaining -- we had started bargaining with a number of concerns beyond the 25 that was originally given to us by the Association. And bargaining had started; we certainly would -- we would not agree to their being covered by the bargaining unit of the Association.

Q At a subsequent date did you send anything to the Association with regard to those three employers, Weatherguard, Esco, and Herbert A. Penner?

A Yes, we did.

MR. BLYER: I'd like to have marked for identification GC-26, -27, and -28.

(Documents above referred to marked General Counsel's Exhibits Nos. 26 through 28 inclusive for identification.)

Q (By Mr. Blyer) Mr. Colavito, I hand you what's been marked for identification as GC Exhibit No. 26.

Can you identify that (handing document to witness)?

A Letter of June 25.

Q To whom?

A To the Independent Association from myself.

Q And --

A Saying --

Q Don't tell me what it says. Just tell me the subject matter.

A Subject matter deals with Weatherguard Service.

Q I show you what's been marked for identification as GC-27.

A   Letter from myself to the Independent Association dealing with the subject matter of Esco Iron Works.

Q   What's the date on that?

A   June 25.

Q   And the third letter, GC-28 for identification?

A   Same day, June 25, from myself to Independent Association dealing with Herbert Penner.

Q   Thank you.

MR. BLYER: Your Honor, I offer these three documents, GC-26, -27, and -28 into evidence.

MR. ISRAEL: Same objection as we had before.

JUDGE FRIEDMAN: Received.

Overruled.

(Documents heretofore marked General Counsel's Exhibits Nos. 26, 27, and 28 received in evidence.)

Q   (By Mr. Blyer) Mr. Colavito, during these first two sessions, were there any firms that the Union agreed to include as part of the bargaining unit that were not named in the original April 21st letter which named 25 employers?

A   I think there were two or three that we agreed to, we had not objected to.

Q   And which three were those?

A   Melto, I think, is one of them. Roma, R-o-m-a, I believe.

MR. ISRAEL: Sorry?

MR. BLYER: Roma.

A (continuing) And I think Wortman.

MR. BLYER: W-o-r-t-m-a-n.

Q Now, we already discussed 18 of the employers named in the complaint.

With regard to these ten others that you've referred to in your testimony, what relationship, if any, did the Union have with them prior to June 30 of '75?

A Same relationship. We had a collective bargaining agreement with them covering the -- generally the same terms and conditions, same production unit.

Q What duration were those contracts?

A Same length of time. I believe they expired June -- they all expired June 30, '75.

Q And were they also individual contracts with those firms?

A Yes, all individual contracts.

Q And they also contained union security provisions?

A Yes.

Q Okay.

MR. BLYER: Your Honor, I'd like to have these documents marked for the present time as General Counsel's Exhibits 29 through, I think it would be 38.

JUDGE FRIEDMAN: 29 through 38?

MR. BLYER: I think so -- 38, right.

And, when we get the rest of the contracts, I'll introduce them -- offer them at that time.

Meanwhile, I'd like to have them marked, please, if I may.

29 is Atwater.

(Documents above referred to marked General Counsel's Exhibits Nos. 29 through 38 inclusive for identification.)

JUDGE FRIEDMAN: Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

Q (By Mr. Blyer) Now, Mr. Colavito, you recall -- do you recall second negotiating session --

MR. ISRAEL: Excuse me.

Did you have some items marked?

MR. BLYER: Just marked.

JUDGE FRIEDMAN: Just been given numbers so far. They've not been identified or anything else.

Go ahead, proceed.

MR. SPIGNER: You introduced those earlier ones in evidence and subject to pulling them out with the body of the contract.

You withdrew that?

JUDGE FRIEDMAN: They were not received.

MR. SPIGNER: They're just marked?

JUDGE FRIEDMAN: Yes.

MR. SPIGNER: Thank you.

Q (By Mr. Blyer) Do you recall a second negotiating session taking place?

A Yes.

Q Mr. Colavito, do you recall approximately when that was?

A A few days later, the 19th.

Q Now, on that date, can you tell me what happened at the negotiating session?

A Well, we received the authorizations that we had requested in the past, and --

Q Who gave them to you, Mr. Colavito?

A Mr. Spigner, Irving Spigner.

MR. BLYER: Your Honor, I'd like this marked as General Counsel Exhibit No. 39.

(Document above referred to marked General Counsel's Exhibit No. 39 for identification.)

Q (By Mr. Blyer) I show you what's been marked for identification as General Counsel Exhibit 39, a three-page document.

Can you identify that (handing document to witness)?

A Yes. These are signatures to the -- it's dated June

10th, but they're the authorization signatures of the principal officers of these firms that they said they represented for the purpose of this bargaining negotiation.

Q And --

JUDGE FRIEDMAN: What was the date of it, Mr. Colavito? I'm sorry.

THE WITNESS: The date of the letter is June 10.

Q When did you get the letter?

A I got it on the 19th.

Q With regard to the number of employers listed in that document, how many are there?

A Twenty-nine.

Q Had the Union agreed to bargain with the Association on behalf of those 29 employers at the time -- at any time?

MR. SPIGNER: What's -- what is it, at that time or any time?

MR. BLYER: At any time.

MR. SPIGNER: Did they at any time --

MR. BLYER: Agree to bargain with the 29 employers named in that document through the Association.

A Everyone with the exception of Walter Balfour.

Q Thank you.

MR. BLYER: Your Honor, I offer this as General Counsel Exhibit No. 39.

JUDGE FRIEDMAN: Those are the authorization signatures?

MR. BLYER: Yes.

MR. ISRAEL: May I have voir dire on this?

JUDGE FRIEDMAN: Sure.

VOIR DIRE EXAMINATION

Q (By Mr. Israel) Mr. Colavito, the three sheets that have been offered, three separate pages, were they handed to you at the same time, all three pages?

A I don't remember now. Possibly.

Q Were they handed to you at the same meeting?

A I don't remember that.

It might have been over two meetings, over a period of two weeks.

MR. ZISKIN: I can't hear the witness.

THE WITNESS: It might have been over a period of two meetings.

Q In fact, was there not a fourth sheet?

A Yes, there is.

Q That went along with these three?

A Yes.

MR. ISRAEL: I object to the admission of this, Your Honor, until they produce the fourth sheet.

MR. BLYER: I'll have to ask a couple of questions.

RESUMED DIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Colavito, do you have that fourth sheet here with you today?

A I may.

It deals with the companies that we had objected to, Weatherguard and Esco, I believe.

Q Esco?

A Yes. Deal with the companies that --

Q Can you check and see if you have it?

A I'll check.

No. I have them in the car. I can bring them in tomorrow.

That may be the sheet that was given to me at the end, the Esco and --

Q All right.

MR. BLYER: I would -- all right, I'll withdraw that motion to introduce it into evidence until we get all four pieces of paper so we have a complete document.

JUDGE FRIEDMAN: All right.

MS. HARPER: Does that complete the voir dire?

MR. ISRAEL: Yes.

JUDGE FRIEDMAN: You may continue, Mr. Blyer.

MR. BLYER: Thank you, Your Honor.

Q (By Mr. Blyer) Now, how many bargaining sessions were there, Mr. Colavito, prior to the expiration of the agreement?

A Five sessions.

Q I can't hear. I m sorry.

A Five sessions.

Q Thank you.

And was there any agreement reached by June 30 of '75?

A No, we did not reach an agreement.

Q And what happened then?

A July 1st the employees of the companies went on strike.

Q When you say the companies, which companies do you mean?

A All the companies that was -- whose contract expired, we hadn't had an agreement with, and all the companies of this Association -- the companies of this Association went on strike, companies that they were bargaining for.

Q Now, at the time that the strike began, what position did the Association take at the bargaining table with regard to a new contract?

A The last day of negotiations?

Q Last day of sessions -- last session before the strike.

A They gave us a list of demands -- proposals that would have reduced the wage rates, reduced the fringe benefits, such as vacation and holidays, reduced the contributions to the funds as well as the benefits under the funds, that would have reduced the job security, like seniority, that would have interfered in the selection of shop stewards; I guess almost every clause of the contract was modified downward. That was the last proposal.

Q Now, in August of 19 5, on or about the 25th of August, do you recall having a meeting with Irving Spigner, the president of the Association?

A Yes.

Q Okay.

Now, how did that meeting come about?

A Shiner from Master Iron Craft spoke to Kenneth Mannsmann, suggested a meeting between Irving Spigner and myself, gave him Irving Spigner's telephone number.

And I called him, and we arranged to meet on the 25th.

Q And where did you meet?

A The Sheraton-Tenney Hotel.

Q Was anyone else present during this meeting?

A No, just the two of us.

Q What did you say to him and what did he say to you at this meeting?

A There was some discussion around the severance clause of the contract, one of the clauses that was in the previous contract.

And one percent contribution was the obligation, and the -- suggested perhaps we could get some insurance from Lloyd's of London to handle that matter, because the employees seemed to be objecting to that clause.

We had a little discussion on vacation.

He told me they recently had a meeting of the Association, and his Association was strong. He said unless they got the contract they wanted, which was a contract that was going to be similar in all details as the Allied Building Metal Industries, which is an organization of employees --

MR. SPIGNER: I didn't hear that.

A (continuing) -- which is an organization of employees in the industry.

Q Excuse me, Mr. Colavito.

You referred to the Allied Building Metal and Trades -- What was the last part of it?

A Allied Building Metal Industry. It's an employer organization.

Q Is that another employer organization that your Union bargains collectively with?

A Yes.

Q I'm sorry. You were saying something in reference to that group.

A They said they would never sign with Local 455 unless they got their demands in relation to that contract.

He said they would fight any employer who would sign up with us who belonged to the Association.

He said some 24 members of the Allied Association were at their meeting; and that, after this was all over, they would be losing their members and joining his association.

He said that they would never sign up with us unless he got that. He said they were advising their members to sign up with the Teamsters instead of signing up with us.

He said, if we didn't give them the Allied contract, they will bring the Teamsters in and break heads if necessary.

Q Was there any reference to three companies in particular?

A And he also said three companies were already in the process of signing up with the Teamsters.

Q Did he mention the names of those companies?

A No, he did not.

Q Now, at any time after that meeting, did you ever raise this with Mr. Irving Spigner, or did he ever raise this subject with you again?

A No, we did not.

MR. SPIGNER: I'd like to make this objection.

The questions are coming to the witness in a way that I've lost track of the -- Did he ever raise these questions before? There are at least four or five questions that were referred to here, or subject matters that are referred to here.

And, if you would be a little more specific in your question, I could follow.

If Your Honor please, I ask the counsel to direct his questions a little more explicitly so I could follow the conversation.

MR. BLYER: I'll restate that question.

MR. SPIGNER: Would you, please.

MR. BLYER: Sure.

Q (By Mr. Blyer) With regard to any conversations with Teamsters that you just described to us, did you ever discuss with Mr. Irving Spigner again anything about the Teamsters in relation to your Union and the employers that you have collective bargaining agreements with?

A No. We only met at bargaining sessions, and we never discussed it any further.

Q Now, on or about January 19th, 1976, do you recall receiving a letter from Association president Irving Spigner?

A Yes.

MR. BLYER: Your Honor, I'd like to have this document marked for identification as General Counsel Exhibit No. 40.

(Document above referred to marked General Counsel's Exhibit No. 40 for identification.)

Q (By Mr. Blyer) Mr. Colavito, can you please identify what has been marked for identification as General Counsel Exhibit No. 40 (handing document to witness)?

A It's a letter from Irving Spigner saying that the executive --

Q Don't tell me what it says. Who does it come from?

A From Irving Spigner.

Q Who is it to?

A To John Zito, secretary-treasurer.

Q I notice the date on that letter is January 16 of '76.

Did you receive that letter on that date?

A No, we did not.

Q As you can best recall, when did you receive that letter?

A Probably about the 19th.

MR. BLYER: Your Honor, I offer this as General Counsel's Exhibit No. 40 into evidence.

I don't think there's any objection.

MR. SPIGNER: No.

JUDGE FRIEDMAN: Proceed.

(Document heretofore marked General Counsel's Exhibit No. 40 received in evidence.)

Q (By Mr. Blyer) Did the Union respond to this letter of January 16 of '76?

A Yes, we did.

Q In what fashion did it respond?

A We sent a letter to the Association.

MR. BLYER: I'd like to have marked for identification --

JUDGE FRIEDMAN: Number -- Can I see No. 40, please?

MR. BLYER: I'd like to have marked for identification as GC-41 this document.

(Document above referred to marked General Counsel's Exhibit No. 41 for identification.)

Q (By Mr. Blyer) Mr. Colavito, I show you what's been marked for identification as GC Exhibit No. 41.

Can you identify that document (handing document to witness)?

A Letter sent by myself to the Independent Association.

Q What's the date of that letter?

A January 20th.

Q What year?

A '76.

MR. BLYER: Your Honor, I offer in as GC-41.

JUDGE FRIEDMAN: Any objections?

MR. ZISKIN: No, Your Honor.

JUDGE FRIEDMAN: Received.

(Document heretofore marked General Counsel's Exhibit No. 41 received in evidence.)

Q (By Mr. Blyer) Just for clarification purposes, Mr.

Colavito, with regard to what's been introduced into evidence as General Counsel Exhibit No. 40, the January 16, 1976, letter from the Association to you with regard to the employers listed in there, did the Union recognize all 19 of the employers listed in there as being part of the bargaining unit that the Association was bargaining on behalf of?

A No. Weatherguard Service is included and Esco Iron Works is included here. And we didn't recognize them as part of the bargaining unit.

Q Thank you, Mr. Colavito.

Okay, now, this letter of January 16, 1976, if I counted correctly, has 19 employers on it. You've explained the status as you understood it of Weatherguard and Esco.

Did any of those employers at a subsequent time enter into an agreement with you?

A Two others, Bay Iron Works and Heuser.

Q Thank you.

A Can I see that again?

(Mr. Blyer hands document to witness.)

A Also Trojan Steel.

Q Thank you, Mr. Colavito.

Once the strike began, were there any collective bargaining sessions between the Union and the Association negotiating committee?

A Yes.

Q And up until the time of this January 16th letter, how many sessions were there, as best you can recall?

A About five.

Q And was there a third party involved in these sessions besides the Union and the Association?

A State Mediation Service, New York State.

Q Now, after you received this letter of January 16, '76, I think you testified on or about the 19th, and then the Union responded to that letter in its letter of January 20, was there any action taken with regard to any future negotiations?

A We received a telephone call from the State Mediation Service saying that Dan Doyle, who is part of the negotiating committee for the Association, called and wanted a meeting set up.

He also called our office and wanted to see me before that meeting.

That meeting was set up for the end of the week.

Q Do you remember the date of this meeting?

A The 23rd.

Q Do you remember who was present on this occasion?

A It was at the State Mediation Service. It was Dan Doyle, Seymour Kaplan from Carlin, and I think two Naiztat, two members of the Naiztat Iron Works, they were present, myself and Kenneth Mannsmann.

MR. SPIGNER: Mr. Blyer, can we get a date when he received a call from Mr. -- the Union -- can we get a date from the witness as to when he received a telephone call saying he wished to discuss further?

This is from the people who left with the Independents.

Q (By Mr. Blyer) Mr. Colavito, would you be good enough to tell us when it was approximately that you got a call from Mr. Doyle?

A It was the beginning of that week. It might have been the 19th or 20th, something like that.

MR. SPIGNER: It wasn't the 19th?

THE WITNESS: Beginning of the week.

I met with him that week privately, and then we met on the Friday. 23rd was a Friday.

It was one or two days before my meeting with him. I don't know the exact date.

Q Mr. Colavito, at this session on or about the 23rd of January 1976, can you tell me what happened?

A We discussed the contract, and we spent a number of hours. And we finally worked out an agreement.

Q And with regard to Mr. Doyle, had he been involved in negotiation prior to the January 16th letter that you had received?

A Yes. He was part of the Association negotiating committee.

Q And was anyone else there on that day who was also part of the Association negotiating committee prior to January 16th of '76?

A No, not on that date.

Q Now, thereafter, and the days that followed, did you have discussions with other employers who were members of the Association?

A Over the weekend or the beginning of the week Uydess from Bay Iron Works joined as well as his brother. They came in because we were sort of cleaning up the contract that we had agreed to.

And I believe a representative from Wortman Iron Works was present also.

Q Did you have meetings with representatives of these two firms as well?

A Yes.

Q And how did those meetings end?

A They al agreed to the agreement, and it was signed with the five companies.

Q And with regard to Mr. Uydess, had he had any position on the Association negotiating committee prior to the withdrawal letter of January 16th of '76?

A Yes, he was part of all the sessions that we had in

June.

Q Now, were any of these individuals, Mr. Doyle, Mr. Kaplan, any of the Naiztats or the other people you mentioned, were they officers or directors of this Association?

A I think they all were, except the representative from Wortman, either directors or officers of the Association.

MR. BLYER: Your Honor, I'd like to have marked as General Counsel Exhibit No. 42 this document.

(Document above referred to marked General Counsel's Exhibit No. 42 for identification.)

MR. SPIGNER: Your Honor, I'd like to make an objection for the record.

This whole line of testimony that's being delivered by Mr. Colavito as elicited by counsel with respect to meetings of members in -- of the negotiating committee, all of this deals with the vital events as to the split between the parties that created the organization.

Now, my objection, Your Honor, is that the time at which these meetings took place is relevant to the conditions that existed in the organization.

And, unless the witness is asked to -- at least to the best of his recollection -- identify on what days and what dates these meetings with these other people joined together with him and finally signed up with his organization, it puts us to a disadvantage in determining what, if any, activities on the part of the Union itself that may not be permissible contributed to this activity.

So, for the purposes -- I require -- I'm asking that w identify the dates and days so that we can explore with the witness on cross those activities that may not have been permissible performed by the Union in inducing these people to sign a contract that they signed.

The objection is to the lack of definiteness of the answers I'm receiving from the witness.

JUDGE FRIEDMAN: Yes, I think the objection is well taken. I think the date and the time -- date and time should be placed, at least as closely as the witness can possibly recollect.

MR. BLYER: I think we have, Your Honor, at least what I thought was important.

I'll go over it again if necessary.

Q (By Mr. Blyer) Mr. Colavito, can you identify what's been marked for identification as General Counsel Exhibit No. 42 (handing document to witness)?

A This is a stipulation signed between the Union and -- dealing with the negotiations that took place on the 23rd.

And it's listed five companies here who are members of the Association and lists the five companies.

Q Now, there's a date on there, January 23 of '76.
What is the significance of that date?

A That's the date on which the agreement was worked out.

Q Now, with regard to the five firms listed on that stipulation, when did they sign that stipulation, as best you can recall?

A We had meetings Saturday with a couple, then Sunday with one, then Monday and Tuesday with all of them.
So, I would say the dates would be from the 23rd, the Monday and Tuesday and Wednesday of that week, at the most, whatever those dates were. 23rd was on Friday of January 1976.

MS. HARPER: 26th, 27th, and 28th.

Q 23rd you had your agreement reached with three companies, right?

A Right.

Q And your next session with another company was when?

A Saturday, Wortman joined the negotiation Saturday with --

Q Both of them?

A Yes.

Q What days did you negotiate with them?

A He came in because he wanted to become part of us.

Then we met again on a Sunday. I met with two of the companies or three of the companies. Bay joined on a Sunday.

Then on a Monday and Tuesday all got together and the -- they signed the contract Monday, Tuesday, and Wednesday of that week.

Q All five firms?

A All five firms, yes.

It was pretty much in that sequence.

MR. SPIGNER: Do we have the place? Has that been adduced yet?

MR. BLYER: Your Honor, if it please the Court, I recognize -- I think the proper procedure would be on cross-examination Mr. Spigner can bring these things out, unless the question is so vague that it's not worthwhile.

And, to me, it's not important where the place was. In some respects it's not important to get a more specific date than I've already gotten.

Unless an objection is made and the objection is sustained, I wish Mr. Spigner would wait until his turn to cross-examine the witness and go into detail.

MR. SPIGNER: The question was addressed to the stenographer.

JUDGE FRIEDMAN: The date, you're pretty well satisfied. The place?

THE WITNESS: The 23rd meeting took place in the State Mediation Service.

The Saturday meeting took place in the office of Brakewell -- that's a company.

The Sunday meeting took place, I believe, in the Sheraton-Tenney.

The Monday meeting took place at, I believe, at Grant's Motel on Long Island Expressway.

The rest of the meetings took place in the -- in each individual company's plant, office or plant.

JUDGE FRIEDMAN: Thank you.

MR. BLYER: Thank you, Mr. Colavito.

Your Honor, I offer this as General Counsel Exhibit No. 42.

MR. ISRAEL: Your Honor, may I be permitted to examine on this?

JUDGE FRIEDMAN: Surely.

VOIR DIRE EXAMINATION

Q (By Mr. Israel) Mr. Colavito, were you present at the signing of this document by each and every one of the employer parties?

A Yes.

Q When was the last signature affixed?

A I think it was -- I think Wortman or Bay were the last ones.

Q What day was Wortman or Bay?

A Last day I think was Tuesday or Wednesday, whatever that date may be.

Q And where was that signature affixed?

A In their company offices. It would be in their company office.

Q That wa [illegible] -- which one of two --

A Bay or Wortman, yes.

Q When did Brakewell sign?

A He might have signed the same day as Bay.

I think I went down to his office from Brakewell, I believe.

Q Did they sign in the presence of each other?

A No.

Q Did they -- they signed the same day?

A Possibly.

You know, I could be off by one day.

Q When was the first signature affixed to this document?

A The -- probably a Tuesday, I think, might be the first signature, Tuesday or Monday. I forget which.

Q When did you sign it?

A When did I sign it?

Q Yes.

A I was the first one to sign it.

Q Were there then continuing negotiations with each of the parties until the last one signed?

A It wasn't a question of negotiations. They wanted to clarify.

There was a question of placing the workers back to work. Seniority questions were involved, things that pertained to their own particular plant about how to come back to work.

Q So that, with respect to each individual signatory to the document, there were questions dealing with their particular plants?

A Most all of them, yes.

Q Did any one of these people sign in the presence of each other?

A I don't think so. I don't think so.

MR. ISRAEL: I have no further questions.

JUDGE FRIEDMAN: All right.

Any objections?

(No response.)

JUDGE FRIEDMAN: Receive this document, Hearing none, received.

(Document heretofore marked General Counsel's Exhibit No. 42 received in evidence.)

RESUMED DIRECT EXAMINATION

Q (By Mr. Blyer) Now, Mr. Colavito, after the withdrawals from the Association, or at least the withdrawal of authorization to bargain from the Association reflected in the January 16th, '76, letter, did the Union call a meeting?

A We had a regular membership meeting set up for the 23rd. We had put out a call for all the employees who worked for these companies in the Association to be present an hour earlier to make a report on negotiations that was taking place the same night -- same day, rather.

Q When was this meeting, then?

A 23rd.

Q Where did it take place?

A At the regular union halls, Marx Ballroom.

Q Did you conduct that meeting?

A Yes.

Q Just tell us briefly what you told the employees of these employers who were part of this Association?

A We told them what transpired that day as well as the -- you know, the meeting, as well as what had taken place within the Association, number of the companies had indicated, according to the letter from Irving Spigner that they were withdrawing their authorization.

We told them that the remaining companies that were negotiating with us who are part -- their negotiating committee as well as officers and directors were part of the negotiations; that we had basically worked out an agreement with them, and that the employees, as soon as they get the word from the Union that they have signed the agreement, they should go back and tell the companies they are ready to go back to work unconditionally; and, because, as far as we're concerned, we had an agreement with the Association, the companies had no right to withdraw unilaterally.

Q Now, after this meeting, did there come a time that the employees either on their own or through the Union requested to go back to work for their respective employers in this Association?

A Yes.

MR. SPIGNER: Your Honor, I'd like to make an objection at this point.

The questions relating to the membership meeting and the determinations at the membership meeting, this was a formal membership meeting, was it not, as I understand it?

THE WITNESS: No. It was an hour before our regular membership meeting.

MR. SPIGNER: This all took place before the regular membership meeting?

THE WITNESS: Yes.

MR. SPIGNER: I withdraw the objection.

JUDGE FRIEDMAN: All right.

You may continue.

Q (By Mr. Blyer) The last question was: Did there come a time after this meeting that the employees of the respective employers in this Association requested to go back to work?

A Yes.

Q Now, in some of those cases, is it not true that they were denied the right to return to work?

MR. ISRAEL: I object to the form of these questions.

JUDGE FRIEDMAN: Sustained.

MR. BLYER: Okay.

Q In regard to the response that the employers made to certain employees when they sought to return to work, did the Union take any action?

A We filed charges, and we made the strike -- boys are locked out, unfair labor --

Q How did you make the strike, as you just described.

A We changed the signs that the pickets were carrying.

Q What did they say before and what did they say now that you changed them?

A Employees of so forth, so forth on strike.

After that we put down, lockout, unfair labor strike.

Q Now, I think you already testified to the effect that, as far as the Union is concerned, there was 28 employers bargaining through this multi-employer Association.

Did there come a time that any of these employers withdrew from the Association?

A Yes.

Q I mean other than the January 16th letter.

A Yes.

Q Okay.

What employers had withdrawn from the Association before that?

A Dextra had withdrawn.

MR. SPIGNER: What was that name?

THE WITNESS: Dextra.

Q Anyone else?

A Carlin and North Shore did. They sent letters that we sent copies of that they were resigning.

Atwater.

Q Now, with regard --

MR. ISRAEL: Your Honor, may I just note one objection to the form of the question?

The question is, did any of the employers withdraw from the Association prior to this January letter. I think the record should indicate that the question and Mr. Colavito's answer presuppose membership in the Association as defined by General Counsel and Mr. Colavito as opposed to how the Association would define its members.

They have only talked about those people they considered members of the Association. There may have been others who they don't consider members of the Association who may have withdrawn.

MR. BLYER: Let me restate the question, if this helps.

Q (By Mr. Blyer) To your knowledge, Mr. Colavito, did any of the firms withdraw from the multi-employer bargaining unit known as the Association at any time prior to January 16th of '76?

MR. ISRAEL: I have the same objection.

We haven't agreed on who were the members of the Association.

MR. BLYER: Well, Your Honor, I think at least as far as -- well, let him answer the question.

Obviously he's answering the question based upon his own understanding of who was in the Association.

MR. ISRAEL: That's fine.

Q Mr. Colavito?

JUDGE FRIEDMAN: I think that, inasmuch as there's no jury here, I know what the General Counsel is driving at, and I know that you're going to say what you're going to say with regard to membership.

I don't know exactly. But I know you're going to consider these people not members in accordance with your bylaws, constitution, whatever you have.

And we're using the word "members" for the point of identification only at this stage of the game.

All right.

Q (By Mr. Blyer) Did any employers other than that January 16th, '76, letter withdraw from bargaining prior to that time?

A Dextra was one.

Q When was Dextra?

A Dextra, I think, was the beginning of August.

Q What year?

A 1976.

Q What about Atwater?

A Atwater was in the fall, October or November of 1975.

Q In connection with those withdrawals from the multiemployer bargaining, did the Union consent to those withdrawals?

A We consented to two of them.

Q Which ones?

A That was Dextra and Atwater.

Q And with regard to Carlin and North Shore, what about them?

A No, we did not.

Q When did they withdraw from the Association?

A I think Carlin late August or early September, and Northshore in September sometime.

Q Okay.

And, in connection with those withdrawals from the bargaining unit, if I may, did the Union file -- Local 455 file any charges with respect to those withdrawals of Carlin and North Shore?

A Yes, we did.

Q And how were those matters resolved by the respective Regions that they were -- the charges were filed in?

A I think the matters are still in litigation. Some part of it is still in litigation in the Regions. Some aspects have been decided; some aspects is still in -- up in one of the levels of NLRB.

Q Is there any other firm -- withdrawn, please.

Are you familiar with a firm named Island Tank?

A Island Tank, yes.

Q The documents indicate that they were part of the employers that were submitted to you as being part of the Association.

Can you tell me what happened with that company?

A They informed us they were going out of business some time in June.

Q Of what year?

A 1975.

Q Okay.

Mr. Colavito, once the Association was formed and the Union was apprised of it and agreed to bargain with it on behalf of the 28 employers referred to already, was there ever a time that the Union consented to a withdrawal from the Association of any of them but for Dextra and Atwater?

A I don't believe so.

Q Had anyone ever requested you, other than Dextra and Atwater, to resign from that Association, any of those employers?

A No.

Q When was the first time that you received that information, that certain employers had withdrawn?

A They had to withdraw?

Q No. Let me withdraw that, please.

With regard to those that did withdraw with your consent, Atwater and Dextra, did -- what happened in relation to those firms?

A Those two firms?

Q Yes.

A Dextra said he wanted to negotiate a contract.

He had an understanding with the Association that, if he wasn't satisfied with the pace of the --

Q I'm not asking that.

I'm saying, after they withdrew, what happened? After they withdrew with your consent, what happened with

Dextra and Atwater and your Union?

A We negotiated an agreement, and he signed an agreement.

Q Is that the case for both of them?

A Yes.

Q Now, when was the -- you made mention before that two other firms -- withdrawn, please.

You made mention of two firms, namely, Trojan and Heuser, H-a-u-s-e-r, having signed up with the Union.

When in fact did they sign?

A I guess around April of this year.

Q And --

A Might have been March, you know, around that period.

Q Now, the January 16th letter from the Association to you makes reference to their bylaws.

Did you have those bylaws at the time you received that January 16th letter?

A No, I didn't.

Q When was it that you first received them?

A Right after the negotiations with the -- where that five companies signed that stipulation.

Q And who gave them to you?

A They all -- most of them said they would try to get us a copy of the bylaws.

And we got a copy of the bylaws, and I turned them over to -- I didn't receive it by hand. I received it at the office someplace.

Q And do you know who sent them to the office?

A No, I don't know which -- don't remember which.

Q But the Union received it in the regular course of their business?

MR. ISRAEL: Oh, I object to that question.

JUDGE FRIEDMAN: Doesn't matter whether they did or they didn't. They got them.

MR. SPIGNER: When did he say they received them?

JUDGE FRIEDMAN: He said the Union received them in the regular course of their business. It doesn't matter.

Q For Mr. Spigner's sake, when, approximately, did you receive these bylaws?

A It was around that weekend period, so it was at the beginning of the week in which they signed the contracts, around that period, that week in which we signed the contracts.

MR. BLYER: I'd like to have this marked, Your Honor, as General Counsel Exhibit 43.

(Document above referred to marked General Counsel's Exhibit No. 43 for identification.)

Q (By Mr. Blyer) Mr. Colavito, I show you what's been marked for identification as General Counsel Exhibit No. 43.

Can you identify that, please.

Can you identify that, please (handing document to witness)?

A Yes. They're the bylaws of the Association.

Q Is this the copy you received in the mails?

A I don't know if that's the same one, but that's a copy of it, you know.

MR. BLYER: Your Honor, I offer this as GC-43.

MR. ISRAEL: Objection, Your Honor.

That's a piece of paper received in the mail with no proper foundation made whether those are the bylaws.

MR. SPIGNER: Are you offering it as the bylaws?

MR. BLYER: Yes, Your Honor.

JUDGE FRIEDMAN: Are we going to play games here? Are you going to refuse to -- Are these the bylaws?

MR. SPIGNER: Your Honor, I have no way of knowing what they are.

I object to these being offered as bylaws. I'll accept them for what it is, simply as it appears to be.

JUDGE FRIEDMAN: I'll receive them for whatever they are. I don't know whether they're the bylaws or not.

If necessary, I'll make it my business to order you to produce the bylaws if there are bylaws.

(Document heretofore marked General Counsel's Exhibit No. 43 received in evidence.)

MR. SPIGNER: Will copies of these be given to us?

MR. BLYER: I have copies of all documents for you.

JUDGE FRIEDMAN: Yes.

MR. BLYER: Your Honor, I don't believe I have anything else of this witness at this time.

I would like to note, though, there are a couple of things we left open, namely, that the collective bargaining agreements were going to be introduced through this witness.

JUDGE FRIEDMAN: Yes. There were --

MR. BLYER: The June 10 letter, we're waiting for the fourth letter.

JUDGE FRIEDMAN: 29 through 37.

MR. BLYER: So, I would like to, since we're going to break around this time anyway, break at this time and tomorrow put Mr. Colavito on to conclude his testimony.

JUDGE FRIEDMAN: All right.

We will adjourn until 9:30 tomorrow.

MR. ISRAEL: Off the record.

JUDGE FRIEDMAN: Unless there's something else?

MR. ISRAEL: No.

Off the record.

MR. BLYER: Why don't we do it on the record, to tell you the truth.

Off the record I've been requested to provide the affidavit of Mr. Colavito to the parties so they may read it overnight and be prepared to cross-examine Mr. Colavito when he begins tomorrow.

I have no objection to that.

JUDGE FRIEDMAN: I don't see anything wrong with that.

MR. BLYER: I'd like the record to reflect that I'm going to give them copies. I think we have four affidavits.

JUDGE FRIEDMAN: Fine. If it will save some time tomorrow, fine.

We'll adjourn until 9:30 tomorrow morning.

(Whereupon, at 4:30 o'clock p.m., the hearing was adjourned, to reconvene at 9:30 o'clock a.m., Tuesday, June 8, 1976.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Region 29

In the Matter of:

INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC.; ACHILLES CONSTRUCTION CO., INC.; GREENPOINT ORNAMENTAL AND STRUCTURAL IRON WORKS, INC.; HEUSER IRON WORKS, INC.; IKENSON IRON WORKS, INC.; KUNO STEEL PRODUCTS CORP.; LONG ISLAND STEEL PRODUCTS, CO., INC.; MOHAWK STEEL FABRICATORS, INC.; THE EELE COMPANY; ROMAN IRON WORKS, INC.; SPIGNER AND SONS STRUCTURAL STEEL CO., INC.; S. CERVENKA AND SONS, INC. : 29-CA-4853

PAXTON METALCRAFT CORP., DIVISION OF APEX INDUSTRIES, INC.; KOENIG IRON WORKS, INC.; TROJAN STEEL CORP.; G. ZAFFINO AND SONS, INC.; ROMA IRON WORKS, INC. : 29-CA-4922

GREENPOINT ORNAMENTAL AND STRUCTURAL IRON WORKS, INC. : 29-CA-4772

ROMA IRON WORKS INC. : 29-CA-4921

and

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO

and

STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

National Labor Relations Board
16 Court Street,
Brooklyn, New York 11201
Tues., June 8, 1976

The above-entitled matter came on for further hearing, pursuant to notice and adjournment, commencing at 9:30 o'clock a.m.

BEFORE:

MORTON D. FRIEDMAN, Administrative Law Judge.

APPEARANCES:

ALVIN BLYER, ESQ.,	Counsel for the General Counsel, National Labor Relations Board, 16 Court Street, Brooklyn, New York.
BELLE HARPER, ESQ.	SIPSER WEINSTOCK HARPER DORN & LIEBOWITZ, ESQS., 380 Madison Ave., New York, New York, appearing on behalf of Local 455.
STANL[illegible]Y ISRAEL, ESQ.,	Bluestone, Kliegman & Israel, Esqs., 509 Madison Ave., New York, N. Y., appearing on behalf of all of the respondents, except Heuser, Ikenson & Spigner,
ROBERT M. ZISKIN, ESQ.,	Mirkin, Barre, Sautstein & Gordon, P.C. 98 Cutter Mill Road, Great Neck, New York, appearing on behalf of Local 810
HAROLD SPIGNER, ESQ.,	3000 Marcus Ave., Lake Success, N. Y., appearing on behalf of respondent Spigner & Sons.

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P R O C E E D I N G S

JUDGE FRIEDMAN: On the record.

Whereupon

DIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Colavito, I am handing you what has been marked for identification as General Counsel's Exhibit 39.

That's a five-page document.

Can you identify that?

(Handing document to witness.)

A These are authorizations from the employers we had contracts with, authorizations for the Association to bargain for them.

Q Now, on those five sheets, how many employers are listed?

A I believe there are 39 and 3--29 and 3, 32.

MR. ISRAEL: Excuse me. This is 39?

MR. BLYER: Five sheets now. I'm adding the two.

JUDGE FRIEDMAN: If you recall, it was incomplete yesterday; you objected to it and the General Counsel did not introduce it.

MR. ISRAEL: Right.

Q (By Mr. Blyer) Now, with regard to the 32 listed there, what position did the union take with regard to which of those 23 were--withdrawn, please.

During the course of bargaining, when the union was bargaining with the Association, which of those employers listed on those five sheets did you recognize as not being part of the bargaining unit?

A Balfour, Weatherguard, Esco and Penner, I believe. Penner and Esco and Weather guard.

Q And those are the four employers you sent letters to to that effect, isn't that true?

A Yes.

MR. BLYER: Your Honor, I offer this as General Counsel's 39.

This is a second copy.

MR. ZISKIN: Thank you.

JUDGE FRIEDMAN: Are there any objections to this now?

MR. ISRAEL: No.

MR. ZISKIN: No.

JUDGE FRIEDMAN: All right. They are received.

(Thereupnn, the document referred to marked General Counsel's Exhibit 3, in evidence.)

Q (By Mr. Blyer) Now, with regard to the four employers that you have mentioned, Penner, Esco, Weatherguard and Balfour, did Local 455 engage in collective bargaining negotiations with them?

A On an individual basis; yes.

Q And have you reached agreements with them?

A Balfour, Penner, Esco. Weatherguard is, I think, out of business or he has been bought out by another company.

Q So with regard to three you have reached agreements?

A Yes.

MR. BLYER: Your Honor, may we go off the record a moment to see if we can get--

JUDGE FRIEDMAN: All right. Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

MR. BLYER: Your Honor, I would like to offer the following stipulation, that with regard to what has been introduced into evidence as General Counsel's Exhibit 25, the April 8, 1975 letter, that that letter was sent to a certain employers, ten in number, and April 9 of 1975, and received shortly thereafter. And the ten employers are Bay Iron Works, Brakewell Steel, Atwater Iron Works, Carlin Manufacturing, Charla Iron Works, Dextra Industry, North Shore Fabricators, Naiztat Iron Works, Island Tank and Wortman Iron Works.

That is the stipulation, your Honor.

JUDGE FRIEDMAN: All right. It is received.

MR. BLYER: Thank you.

Q (By Mr. Blyer) Mr. Colavito, we had marked for identification certain exhibits.

I would like to show you each one, and if you can identify each--

JUDGE FRIEDMAN: Are those 19 through 38?

MR. BLYER: I'm starting with General Counsel's 2, your Honor, that was the first group.

MR. ISRAEL: 2 was introduced, I believe, your Honor.

JUDGE FRIEDMAN: No. It was not received.

MR. ISRAEL: No.

Q (By Mr. Blyer) Can you identify what has been marked for identification as General Counsel's Exhibit No. 2?

(Handing to witness.)

A It is a contract for a period through '75, June 30, 1975, with Roma Iron Works.

Q And who are the signatories beside Roma?

A Well, the president, myself, and secretary, recording secret-ry, Herbert Hayes, in the union. Romanelli for the company.

Q I show you what has been marked for identification--

MR. ZISKIN: Excuse me. I don't mean to interrupt, but if you just show us the agreements I think we will stipulate to these things and save a little bit of time.

MR. ISRAEL: I certainly will.

MR. ZISKIN: The other issues the other day there were differences in the agreements but if you are going to put the agreements in--

JUDGE FRIEDMAN: You can check the differences later when you mark your arguments in your briefing.

MR. ZISKIN: Yes.

MR. BLYER: I think there may be some minor differences.

MR. ZISKIN: If they are in, I can look at them at some later time.

JUDGE FRIEDMAN: Thank you very much, Mr. Ziskin. The only reason that I was at all-- Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

Do we have voir dire on any of this?

MR. ISRAEL: Yes.

VOIR DIRE EXAMINATION

Q (By Mr. Israel) Mr. Colavito, just to save me the time from looking at the documents, are these documents essentially the same?

A Yes.

Q I think you mentioned the only differences were individual shop differences.

A Just. I gave you a different--

Q Now, yesterday, you made reference to a term referring to these agreements. I think you said these were standard independent contracts; was that the terminology?

A Yes.

Q Are they all standard independent contracts?

A Well, we call them standard independent one tract because I guess about 98 percent of it is all the same, all the clauses are the same, and so forth, an independent shop as Peelle may have two men under a slightly different classification.

Q I see. But that expression is used to distingu8sh it from the standard other--

A From the Allied agreements, from the Bllied Building Metals Industry Agreement.

Q I see. All these are standard independent with certain minor differences?

A Yes.

MR. ISRAEL: No further questions.

JUDGE FRIEDMAN: All right, Mr. Spigner.

VOIR DIRE EXAMINATION

Q (By Mr. Spigner) I want to--

JUDGE FRIEDMAN: I'll ask for your objection later.

MR. ISRAEL: Ihave none.

JUDGE FRIEDMAN: You have no objection. All right.

Q My questions are directed to the signature pages on the back of these agreements.

These signature pages, do they represent the pages that were annexed from some stipulations that are entered into previously?

A No. No. They were-- They came from a contract as you have in your hand that was given to the company. The stipulations are a different form. It's a different form altogether.

Q So that-- Can you see-- Can you see what I am holding up--

JUDGE FRIEDMAN: Why don't you get up, Mr. Spigner and show it to him?

A I know the stipulation is a different form altogether, it is not in that form at all.

Q If you will examine the Spigner agreement, General Counsel's Exhibit 18, you will see this lastsignature page appears to be affixed to what would normally be the signature page on the agreement. Is that correct?

A Yes.

Q There are two page 33's; is that correct?

A Yes.

Q What I am asking is, where is this page derived from? Was it signed--was it signed when this whole agreement was annexed to it or was it signed separately?

A The procedure is that six contracts were--we used six contracts in the union because they go out to various sources.

Q Six contracts?

A About six contracts. So what we do is we have two full-size agreements, one the employer retains, one the union retains and we have the others in the office and then we have six signature sheets, so sometimes you have an extra page left on there which isn't signed so we take the signature sheets and apply them to the ones that remained in the office instead of carting them back and forth and forwarding them to the employers.

Q When this page was signed, was an agreement like this annexed to it?

A Yes, it was; yes.

Q Are all change that may have been reflected in the stipulations of settlement that prececed these formal agreements, are they incorporated in this agreement and the other agreements?

A They should be incorporated in these agreements; yes.

Q They should be?

A Yes. That's our procedure.

MR. SPIGNER: I'm through with it. I accept the agreements.

JUDGE FRIEDMAN: They are received. That's

General Counsel's Exhibits Nos. 2 through 21.

MR. BLYER: Your Honor, I'm sorry, I believe it is 2 through 19.

JUDGE FRIEDMAN: Yes.

MR. BLYER: And then 29 through 38.

JUDGE FRIEDMAN: All right.

(Thereupon General Counsel's Exhibits 2 through 19 and 29 through and including 38 received in evidence.)

Q (By Mr. Blyer) Mr. Colavito, with regard to the Roma contract, how long has Local 455 had a collective bargaining agreement with Roma?

A Eight years, seven, eight years, nine years going something like that.

Q How about Achilles?

A Over 12 years.

Q Cervenka?

A I'm not so sure. I'm not so sure. But it would be a considerable period of time, too.

Q Long Island Steel?

A Also, you know, it has been around since I have been around all these 12 years.

Q Mohawk?

A That's about seven or eight years.

Q Cervenka?

A Longer than I have been around.

Q Melto?

A Melto, I think, five or six years.

Q Trojan?

A Trojan, about three or four years.

Q Peelle?

A Oh, I guess 35 to 40 years, I guess.

Q Paxton?

A Four, five years.

Q Koenig?

A Koenig, considerable period of time. Probably 20 years.

Q Ikenson?

A I think he is longer than I have been in office. I recognize him when I came in office.

Q Roman?

A I'm not so sure. Barely six, seven years.

Q Kuno?

A At least two contracts, about six years or so.

Q Green point?

A Greenpoint, considerable period of time. I think he has been around since I have been in office.

A At least 12 years.

Q Heuser?

A It may be a fairy new one, maybe two contracts.

Q Spigner and Sons?

A I think a long time, more than I have been in office.

MR. SPIGNER: Beg your pardon?

THE WITNESS: More than I have been in office, which is 12 years.

Q Master?

A Master, at least 13 or 14 years.

Q Atwater?

A Atwater? At least the same period.

Q Carlin?

A Carlin, five, six years. I don't know; something like that.

Q Bay? I'm sorry, Charla?

A Charla--

MR. ISRAEL: Is Charla part of this case? Isn't that another case?

MR. BLYER: Patt of the Association.

Q Charla?

A At least 15 years.

Q Bay?

A Bay more than 15 years, I think.

Q Brickwell?

A Brakewell. About six years, I think.

Q North Shore?

A About the same period of time, six years.

Q Island Tank?

A I think it is a fairly new company, might be--it was under two contracts, about five or six years at least.

Q Naiztat?

A It's around, I think, as long as I have been around.

Q Worthman?

A Worthman, also, at least as long as I have been around.

Q And Dextra?

A Dextra is a fairly new company; five years.

MR. BLYER: Thank you, Mr. Colavito. I have nothing further.

MS. HARPER: I am relying on the examination of General Counsel.

JUDGE FRIEDMAN: You have nothing?

MS. HARPER: No.

JUDGE FRIEDMAN: All right.

You may proceed, Mr. Israel.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Colavito, you have indicated you have been president of the local for approximately 12 years.

That would mean that you became president in 1964; is that correct?

A That's correct.

Q Now would you describe the general businesses of the employers under contract with 455 in 1964, and the general businesses of the empl9yers under contract with 45t at the expiration of the 1970 to 1975 contract?

A General business, the kind of work they perform; is that what you mean?

Q Yes.

A Metal fabricating business, most of them fabricating for the building industry, doing structural steel work, miscellaneous iron, ornamental iron work. Some make--a few make some specialized products in the industry, but it is all basically metal fabricating work and skills involved in producing metal work.

Q How does-- Has the general nature of the business of the employers changed substantially in theperiod 1964 through 1975?

A I don't know what you meanby general nature. There are some have expended and grown, some have remained the same size. Their volume of work is greater. New York is an incubator for small businesses, businesses come in, businesses go out, family businesses last one or two or three generations. It is the nature of the New York environment since I have been around.

Q What I meant was, the description you gave of the types of businesses done by the employers, did that apply both to 1964 and 1975?

A Yes.

Q Is it a fact that there are substantially less employers under contract with 455 at the expiration of the 1975 contract than they were in 1964?

A I think the numbers may have been the same, the numbers.

Q And the number of employees involved?

A Employees were less, but the number of employers, because they vary from one to -- I think the number of employers are about the same. The employees, less.

Q Less?

A Less employees, yes. There's some difference.

Q Now, you have made reference in your direct testimony to an association, Allied Building Metals--give us the exact name.

A I think it is Allied Building Metal Industries, Inc.

Q Was that an employer association in existence in 1964?

A Yes.

Q And was that also an employer association in existence at the expiration of the 1975 contract?

A Yes.

Q And did that association bargain collectively with your organization on behalf of its employer members?

A Yes.

Q Now, what percentage of the employers would you say in 1964 were members of this association?

A What percentage of the employers?

Q Of the employers.

A I would say about sixty employers--less than half, youkno w, between --forty percent may be something like that.

Q In 1964?

A No, 1975.

Q '75.

A In '64 I think they represented the majority, I think.

Q Now, with respect to 1964 and 1975, what percentage of the emplployees covered by your collective bargaining agreements were employees of the employer members of the Allied?

A In 1964 they probably had a majority or close to it, you know, close to 50 percent; employees, you know, if you take the exact date of 1975, they were between 40 and 50 percent.

Q Of the employees?

A Yes.

Q Was the first contract you negotiated or involved in negotiating on behalf of the local, was that the 1964 collective bargaining agreement?

A In which I was involved in?

Q Yes.

A I was involved in before the war for a couple of years as president of the local union. That's a long time ago, with the association.

Q When you came back, apparently-- When you came back in 1964, was the first contract you then negotiated in 1964?

A Yes.

Q Did you negotiate or attempt to negotiate a contract with the Allied?

A Yes.

Q And in 1964 at the same time you were attempting to negotiate with the various independent companies?

A Yes. We did. I came in to negotiate right from election. Tgere was bargaining that had already started with the old official, so I sort of joined. It was process already in the works, but there was simultaneous negotiation with the Allied and independent employers.

Q Would it be a fair statement if I were to state that the practice in 1964 was for the local attempt to negotiate a contract with the Allied, at the same time attempting to get the independents to sign stipulations that they would be bound by the Allied contract as an when negotiated?

A 1964, no policy changed at that point.

Q What was the practice in 1964?

MR. BLYER: I'd like to object, your Honor. I just don't know the relevancy of this testimony, and I would like to be apprised of it. We have had--

MR. ISRAEL: Certainly, your Honor, if nobody else, if this was just general background information I think I'd be entitled to give you some of that with respect to an 11-month strike.

But I think it goes, aside from general information, it goesto persuasive point. The testmony, direct testimony of Mr. Colavito was at least partially designed to convince you that without cause and in violation of law employer members of the independent association attempted to withdraw either from the associatinn or withdraw their bargaining organization.

We would attempt to show to you that withdrawal from the association or withdrawal of the bargaining authorization is not illegal if in fact during the course of negotiations there developed a legal, legitimate impasse in negotiations after good faith collective bargaining or if in fact th e bargaining between the association and Local 455 simply collapsed.

At that point in time I think the law is rather clear that under that given set of circumstances there can be proper withdrawal.

I think the only way for you to determine whether there was an impasse or whether there was a collapse of negotiations is to understand the history of the negotiations which in fact became part and parcel specifically through conversations of the 1975 negotiations.

MR. BLYER: Your Honor, if I may be heard briefly, it is the General Counsel's position that there could be no lawful impasse here.

Frankly, an impasse presupposes good faith bargaining and no prixr unfair labor practices. Here I don't think--I think the testimony will show that there was not good faith bargaining.

JUDGE FRIEDMAN: At this stage of the game it does not.

MR. BLYER: Second, your Honor, there was a case that was decided by the Board called Highway Billboard, which specifically addressed itself to that issue, whether an impasse would permit the withdrawal from bargaining during the course of negotiations of an employer; in other words, did an impasse constitute unusual circumstances within the meaning of the cases that had come before.

And the Board clearly found it did not.

I have that case available here for anyone who wishes to see it.

Now, I just bring this to your attention.

MR. ISRAEL: I would suggest to you, sir, that there are a number of cases on the Board, the Board has ruled many times that an impasse would under proper circumstances constitute a situation granted leave to withdraw, but that the Board has said there is no such thing as a per se rule in deternububg whether an impasse has been arrived at. And each case must be determined on a case by case factual analysis.

JUDGE FRIEDMAN: Overruled.

Proceed.

MR. ISRAEL: May we have the last question read back?

(Question referred to read by reporter.)

A Was that the practice of the union in terms of its negotiating policy?

Q Yes.

A It would negotiate with independent employers as well as the association.

We had a couple of associations.

Q Now, in 1964, the 1964 negotiations, just one further question, was there a strike?

A Yes, there was, with some employers.

Q Of some employers?

A Yes.

Q Did you strike the Allied?

A Yes.

Q Was that a strike of approximately seven weeks duration?

A Five to seven weeks.

Q Was the next negotiation 1967 with the Allied?

A Yes. And the other employers, too.

Q Now, at that time was the policy of the union to attempt to negotiate a full contract with the Allied and at the same time get the independents to sign stipulations agreeing to be bound by the Allied settlement?

A No, no, we did not.

Q Did you strike the Allied in 1967?

A Yes.

Q Was that a three-month strike?

A Yes.

Q When was the next negotiation with the Allied?

A 1970.

Q Was the policy of the union with respect to stipulations and full negotiations with Allied any different in the 1970 negotiations?

A No.

Q In any of these three negotiations did you sign stipulations with any independent employers whereby they agreed to be bound by the final settlement of Allied?

A No. The only thing they agreed to be bound by is with relation to the final settlement on the grounds of the contribution to the fund. It was decided with Allied since they were appointed trustees for the employers, that that sum would be bound by all the employers.

Q Was there a strike in 1970, do you know?

A No, there was not.

Q Strike of any independents in 1970?

A A few, yes.

Q Was the next negotiations 1973?

A Yes.

Q Any strike-- You strike the Allied?

A I think a week and a half, yes.

Q Strike any of the independents?

A Yes. Some, a few.

Q Now, the 1973 contract for the most part covered the period 1973 to 1975?

A Yes.

Q In that negotiation did most of the independents agree to be bound by the Allied settlement with respect to the terms of the second year wage increase?

A You want to say that again, please?

JUDGE FRIEDMAN: Would you read it back, please?

(Record read by reporter.)

A You're talking about those who signed up?

Q Those who signed the stipulation.

A Yes. They agreed to take whatever longer agreement was worked up. It was basically a one year stipulation with the agreement that if a second--longer agreement was worked up, they would accept the terms of the Allied agreeement for the second and third year.

Q Now, Mr. Colavito, in your direct testimony yesterday, you mentioned on two occasions that Mr. Spigner, Irving Spigner, requested that his association be given the same basic contract as the Allied Association?

Do you recall that testimony?

A He was looking for the difference that exists in the Allied agreements to be given to the independent association.

Q All right.

Now, were there differences in the two contracts, that is the Allied contract and the indepdents contract?

A The basic economic terms of the contract was exactly the same.

There were language differences in a number of Allied agreements.

Q Now, would it be a fair statement to say that the language differences as you call them in 1964 numbered approximately 2 or 3?

A No.

Q How many did they number in 1964?

A A dozen at least.

Q Would it be a fair statement to say that in 1975 they numbered in excess of fifty?

A Yes.

Q Do you know the exact number?

A No. I don't know the exact number.

Q Would 56 ring a bell?

A It's a question of what constitutes differences. Language, words that are different and those are what they call differences in some respects.

Some respects they are a little more substantial such as a doubletime for overtime, on Friday versus time and a half.

That's what you call a more substantial.

Q Well, these fifty-odd differences, substantial or insubstantial, to the extent they existed, is it not fair to state that in each and every case the difference was more favorable to the employer in the Allied case than it was to the employer in the independent contract?

A Not in all cases. In many respects they are somewhat subjective.

Q Well, would you give me an instance in which the difference was more beneficial to the indepdent employer than the Allied employer?

A I think in questions of shops where the employer would want to use more junior employees to do the work of the more senior employees in another classification, the Allied agreement in that respect is stronger for the employees as contrasted with the employees' independent shops.

Q Any others?

A I think in leaves of absence, I think we have a slightly more beneficial clause for the employer versus the Allied.

I would have to look section by section because there are basically--most of them are basically language questions.

Q Not to belabor the record with 56 differences, let me just point out the first three that seem to appear in the contract.

The independent contract follows the employer, that is it covers the employer and his employees if the independent employer moves out of the metropolitan area, does it not?

A Yes.

Q The Allied contract, you know, follows the company only if the company moves within two hundred and fifty miles of Columbus Circle, you know that?

A Yes.

Q You know that the independent contract, for example, includes plant clerical employees, but the Allied contract does not include plant clerical employees, you know that?

A That's right.

Q You know that the independent contract includes employees engaged in the fabrication and manufacture of plastic products but the Allied does not include such a clause?

A Correct.

Q If I went down fifty-odd, you know the other fifty as well as you know the back of your hand?

A That's right.

Q Are these the differences that Mr. Spigner mentioned on a number of occasions, Irving Spigner, as constituting the differences in the contract that he wanted?

A Right. These are the kind of differences that we discussed. And as I pointed out there is maybe three plant clericals in the whole industry, no one is doing any plastic work.

That's the type of difference that exists. And whether there was--some warranted a strike and taking two or three meetings and negotiations on a principal difference of--these types of differences, to us it seemd ridiculous, that's all.

Q Would you explain, Mr. Colavito--withdrawn.

Is it your testimony that each and every meeting the independent association, its negotiations with you, raised this question of the Allied contract?

A Yes. They made that a point that if th ey did not get that, there is no sense of going on with negotiations. The first meeting we spent the entire first meeting at that.

Q Now, would you--

A And continued in one form or another at the other meetings.

Q Would you explain the process by which the approximately 12 or a dozen or so differences that you testified existed in 1964, enlarged itself into an -- in excess of fifty differences by the end of the '73-'75 contract?

A Explain the process and how it happened?

Q Yes.

MR. BLYER: I object to the relevance of that. In fact it happened, fine. I don't see why it would be important to explain why?

I withdraw my objection, your Honor.

A Well, in 1964 the Allied had a five or seven-week strike, many of the independent employees signed up. A lot of them the first week, second week and as the strike went on they signed up. We had certain demands that were being raised in terms of job security, seniority and so forth, and we won them in the independent shops. And e won it in a different form, maybe exactly the same thing, with the Allied, because they made a fetish of trying to get differences in language.

So you had over a period of strike lasting a longer period of the Allied compared with independents, some clauses developed historically a little difference.

And they enlarged into fifty--over fifty points by 1975.

JUDGE FRIEDMAN: They what?

A They enlarged in some fifty points in the 12--

JUDGE FRIEDMAN: They enlarged?

THE WITNESS: From 12 to 50, yes.

JUDGE FRIEDMAN: All right.

Q (By Mr. Israel) Now, can you state what the response was of the local in the '75 negotiations to Mr. Spigner when the--when Mr. Spigner requested or demanded that he have the Allied contract?

A We said we would examine every point with them. And we would address ourselves to every company and every point. And if they could prove to us there was a meaningful need for a modification of a clause or whether it was the Allied or even the modification of the present clause we would certainly address ourselves to that. And we attempted to do that because they wanted in-bulk and we forced eventually a concrete discussion on each particular clause and how it applied to the various companies that they were bargaining for.

Q And which, if any, of the differences did you agree to eliminate?

A We never arrived at agreeement. When it came to the last meeting of the negotiations they gave us an agreement which was radically different than what the Allied even wanted.

So we never even arrived at -- to a point of working out anywheres close to agreement.

Q Did I understand you to state at no time during the negotiations did you agree to eliminate anyone or more of the differences?

A No. I did not say. We never got to a point--that stage in which we well, got pointed to a bargaining where we can say that we could do this because they were insisting on practically all the clauses. Even during the month of Agust they said they wanted there way or else.

Q Not to belabor the point, so is it clear to say there never was an agreement--so that you, meaning the local and the independent, never came to any agreement on the elimination of any changes?

A No, we did.

Q You did?

A The final contract worked out with the members, representing the association at the last negotiation, we notified--modified, as you can see--we modified the stipulation.

We modified five or six points for them.

Q Mr. Colavito, did y9u ever come to an agreement with Mr. Spigner on behalf of the association to eliminate--

A No. Because he had offered to come in with some proposal on economics and he never came back tomorrow, and he never really did any serious bargaining with us.

Q Now, you made reference in your direct testimony to the standard independent contract.

Is that the contract that we have seen this morning?

A Yes.

Q Now, you have also made reference to a standard Allied contract.

What is that?

A I don't mean standard Allied. If I ever said--there was an Allied contract, that's what.

Q Has the term "standard Allied contract" ever--

A No.

Q Is there such a thing as a standard industry contract?

A They are interchangeable, standard independent contract are interchanged with each other. The language is used interchangeably. Can I explain it?

Q Yes.

A Basically it would cover the kind of shops that you have there. They represent a certain industry.

You may have a man who manufactures machinery, the bulk of their clauses maybe the same but he is not part of our building, metal building industry, so to speak. He fabricates for a special--makes a special item.

Q Well, are there any independents or were there any independents as of the expiration of the '73-'75 contract who did essentially the same work as members of the Allied?

A Any other independents?

Q Any independents at all?

A Yes. Lots of them.

Q What contract, if you signed contracts with any of these people, did they get? Did they get a contract similar to the Allied or a contract similar to the independent?

A Meaning this negotiation?

Q Yes.

A Or previous negotiation?

Q Let us start with this negotiation.

A Well, this negotiation has a different industry than all previous negotiations?

A They got the first year--stimulation, which was for one year. Theygot that for the first year of an agreement. And then for the second and third year whatever changes the Allied made in the second and third year of their agreements.

JUDGE FRIEDMAN: Did they agree to accept those changes?

THE WITNESS: Yes.

Q But in terms of language, the language, did they get the language of the standard independent contract or the language of the Allied contract?

A They got the language that was in the first year of the stipulation, which was in some respects similar to the Allied and in some respects a little different than the Allied.

Q Mr. Colavito, was every clause of the contract written out in the stipulation?

A Every clause was referred to. There were a number of documents. The old agreement that they possess, the stipulation, and the proposal--proposed agreement that we gave them before the negotiation--

Q So that the stipulation modified the old agreement that they had had?

A Yes. Unless they were a member of the Allied association, they left and they were -- they would adopt the standard independent agreement.

Q So this employer who did work similar to the work of Allied, his old contract which was modified was basically an old independent contract?

A Basically independent agreement, basically an old independent contract.

Q All right.

MR. ISRAEL: May I have this document marked for identification, please.

JUDGE FRIEDMAN: Respondent Association's Exhibit 1.

(Thereupon, the document referred to marked Respondent Association's Exhibit 1 for identification.)

Q (By Mr. Israel) Mr. Colavito, I show you a document marked Respondent Association Exhibit No. 1.

I will ask you, can you identify this?

(Handing to witness.)

A It looks like the stipulation that was used in the 1973 negotiations.

Q Well, it is, isn't it, that stipulation?

A Yes.

Q It bears your signature, does it not?

A Yes. I'm just trying to pinpoint the time.

Q That is the stipulation which resulted in the formal contract for the period 1973-1975, is that correct, for Balfour?

A 1973-1975, yes.

MR. ISRAEL: Your Honor, I offer this.

THE WITNESS: Can I have that last question back, please?

JUDGE FRIEDMAN: Yes.

Would you read the last question again.

(Record read by reporter.)

A For Balfour, okay.

MR. BLYER: No objection, your Honor.

JUDGE FRIEDMAN: Received.

(Thereupon, Respondent Association Exhibit 1 for identification, received in evidence.)

Q (By Mr. Israel) Mr. Colavito, I call your attention to page 2, after the printed words "Termination June 30, 1974, are certain handwritten words.

Can you read them out loud?

A Yes. The parties agree to add a certain year to this agreement expiring June 30, 1975, including the same terms and conditions provided in the standard independent contract.

Q Now, that phraseology, standard independent contract, is the phraseology you have used today; is that right?

A Right.

Q And pursuant to this stipulation Balfour in fact received a standard independent contract which presumably is one of these contracts on the desk today; is that right?

A Well, not Balfour Door, that is a specialty company, makes doors only. He would have a whole section that will be different.

You have a wage rate and wage scale and classification that are altogether different. He makes one item. He is not really what we consider a standard independent company as, let's say, Grant Iron Works--Let us not Spigner even. So he is a specialty company. He may have most of the clauses that are standard for the whole industry, standard independent shops but he has got major weight section which is major part difference. He's got whole classifications, which is different, wage rates different.

Q Has Balfour received one of the contracts marked in evidence today?

A I don't think Balfour is there. Is it?

Q Does Balfour have a contract identical to the Allied?

A No, he does not.

Q Does Balfour's contract contain the 56 or so differences we have spoken about today?

A Well, he has differences. The clause is basically the same. When you have a wage section which is radically different than you have to have--I don't know where the number goes to, how many differences there are in the wage section.

MR. ISRAEL: May we have this document marked for identification as Respondent Association's Exhibit 2?

(Thereupon, the document referred to marked Respondent Association Exhibit 2 for identification.)

Q Mr. Colavito, I show you Respondents' Exhibit 2 and ask you if you can identify this document (handing document to witness)?

A Yes. It is a contract with Bay Iron Works, 1973-1975 period.

Q Is that the stipulation that was entered into with Bay prior to the formal contract?

A Yes.

MR. ISRAEL: I offer it in evidence, your Honor.

MR. BLYER: I have no objection, your Honor.

JUDGE FRIEDMAN: Received.

(Thereupon, Respondent Association Exhibit 2 for identification, received in evidence.)

Q Mr. Colavito, once again referring you to page [illegible], would you read the language subsequent to the words "Termination June 30, 1974"?

A "The parties agree to add a second year to this agreement expiring June 30, 1975, including the same terms and conditions provided--providing for in the standard industry contract for the second year.

Q Now, is there any reason why the word standard industry contract appears in this stipulation whereas standard independent contract appears in the Balfour stipulation for the same period of time?

A No. I think it is loosely used interchangeably.

Q Was there any intention on the part of the local in this--when this stipulation was prepared to have Bay believe that by use of the word standard industry contract rather than standard independent contract , Bay was going to get the Allied contract?

A No. No way.

Q And in fact Bay did get the standard independent contract; is that correct?

A Yes. Either way you want to use it. It is the same contract.

Q But Bay's contract is one of the contracts offered in evidence today, is it not?

A Yes, yes.

Q And that you have referred to as the standard independent contract?

A Or standard industry contract, either way.

MR. ISRAEL: May I have this document marked

Respondents' Exhibit 3.

(Thereupon, the document referred to marked Respondent Association Exhibit 3 for identification.)

Q (By Mr. Israel) Mr. Colavito, I show you Respondents' Exhibit No. 3. I will ask you if you can identify it--that document (handing)?

A It is different.

Q What is that document?

A Contract--stipulation with Spigner.

Q Now, is that the stipulation for 1973-1975 period?

A Yes, it is.

Q I see.

MR. ISRAEL: I offer this document.

MR. BLYER:_ I have no objection, your Honor.

JUDGE FRIEDMAN: Received.

(Thereupon, Respondent Association Exhibit 3 for identifidation, received in evidence.)

JUDGE FRIEDMAN: Is there an objection from anyone else?

MR. ZISKIN: No, your Honor.

Q Now, Mr. Colavito, once again, calling your attention to page 2 after the words "Termination June 30, 1974"--

A Right.

Q Would you read the words which are typed after those words?

A The parties agree to add a second year to this agreement expiring June 30, 1975, including, what's crossed out, the same terms and conditions provided for in the standard industry Allied contract.

Q Now, what is the standard industry Allied contract?

A I have no idea. It is the first time I have seen this in my life.

Q I see. Now, would you turn to that second page again? Is that signed on behalf of the local?

A Yes. By Anthony Schifano.

Q Who is he?

A He is a vice president.

Q He currently is vice president?

A Yes.

Q Was he vice president then?

A He was just about vice president at that time, the first time; yes.

Q I see.

So you have never seen this before?

A I have never saw this before, no.

Q Who directs it or supervises the preparation of the final contract from these stipulations in your organization?

A Generally the office may do it. If it is a special contract, I may go over that myself and have our attorneys involved.

Q You mean officers don't review contracts before they are signed?

A Officers in what respect?

Q Officers of the local review these contracts, the ones on the desk the day before they are signed?

A No. We get a batch of them for signature by the office, these contracts/are prepared and you sign them.

Q Was Spigner and Sons given the Allied contract for the period 1973-1975?

A I don't believe so. I don't believe it was.

Q Do you know ahy it was not?

A Because probably everybody thought it was a standard independent contract and this language which is very peculiar language, I never seen it before in all the years I have been around.

Q Mr. Schifano never brought this to your attention?

A No.

Q Mr. Spigner ever tell you--Irving Spigner, that is -- negotiations for the current contract that at least my company had in writing that it was to get the Allied contract but it never did?

A He inferred that. I asked him to produce it, but he never did. He never produce two or three times he raised it.

Q

Q Well, now, he inferred it.

A He inferred it, yes.

Q And you asked him to produce that document?

A Yes.

Q Didn't you tell me just now that this is the first you ever heard of this?

A The first I ever seen it, I said.

Q But you heard of this situation before?

A Yes. By Spigner, he inferred that he had a special agreement some place.

Q Did you-- Does the local retain copies of these stipulations in its files?

A I;m pretty sure we do. We should have them.

Q Didyou check your files when this was inferred to see if there was such a stipulation?

A No, I did not.

Q Did you have any one else do that for you?

A I did not.

Q Any particular reason when the subject was brought up you did not check--

A If I had to check what came across the table from the mouth of employers' spokesmen, I spend the rest of my life doing that, okay.

Q Let us -- Let me understand that, the reason you didn't do it, because you don't want to check everything that comes across the mouths of spokesmen?

A No. I judge each situation by myself, and I make the decision on that.

Q Let me understand. It isyour testimony that one form or another practically every negotiating session the question of the Allied contract came up with the independent, with the last negotiation; is that correct?

A With this Association; yes.

Q And you did not think it possible enough to check whether there was a stipulation for the--for a company involving the president of the Association where he said he already had that in writing?

MR. BLYER: Your Honor, I object to the form of the question. Whether it was important or not is immaterial.

Mr. Colavito said he did not check and he gave his reason why.

JUDGE FRIEDMAN: Sustained.

Q Mr. Colavito--

JUDGE FRIEDMAN: I'm sorry, may we have this marked for identification as Respondents' No. 4, please?

(Thereupon, the document referred to marked Respondent Association Exhibit 4 for identification.)

Q Mr. Colavito, I show you Respondents' No. 4. I will ask you if you can identify this document (handing).

A Yes. It is a contract--stipulation entered into between Peelle Door and our local union, dated December of 1969.

Q Then is this the stipulation--

MS. HARPER: Could we have a copy of that?

MR. ISRAEL: I'm osrry. I offer this--

JUDGE FRIEDMAN: What is the date on that? Sorry.

THE WITNESS: December '69.

MR. ISRAEL: December 8, 1969.

I offer the same.

MR. BLYER: No objection, your Honor.

JUDGE FRIEDMAN: Received.

(Thereupon, the document marked Respondent-Association Exhibit 4 for identification, received in evidence.)

Q Mr. Colavito, would you read Paragraph 3, please?

A Paragraph 1?

Q Three.

A Three. Upon execution of a group agreement between Allied Building Metal Industries--it is crossed out, independent employers--

Q What was crossed out?

A What is crossed out is "or the industries' independent employers, Local 455, the terms of said agreement covering wages, wage increases, fringe benefits, any and all conditions which are better than those existing in the company shop shall be assumed by the partie hereto and shall be put into effect as of the efective date of the Allied industry agreement.

Q Mr. Colavito, has Peelle, Peelle Company, at all times subsequent to this received, with perhaps certain minor changes, standard industry contract, standard independent contract?

A Yes.

Q Is that one of the document in evidence today?

A Yes.

Q Has Peelle ever received an agreement which has the differences which are contained in the Allied Building Metal Industries contract; yes or no, sir.

A You said yes or no?

Q Yes or no.

A I don't know if I can answer yes or no. If you want me to answer it--

Q You wat me to repeat the question?

MR. ISRAEL: Read it back.

(Record read by reporter.)

A I can't answer yes or no because the intent of that clause was that they would receive, both parties would adopt the changes that were made in the negotiations that were taking place at that time, which was an earlier negotiation with the Allied Building Metal Industries. His contract had already expired. Peelle--we were in negotiations with Peelle so it overlapped. We were involved in early negotiations.

We got an early increase in wages. We adopted all the improvements made in the Allied contract, and were adopted in the Peelle contract.

And we never had any squawk from the company on that.

Q As a matter of fact, Mr. Colavito, Mr. Peelle has differed with that interpretation for five years.

A Not with me.

Q With whom?

A I don't know if he has with anybody else, but it has not come back to my attention.

Q Never said that to you that he was entitled to the Allied contract?

A No, sir.

Q That did not come up in negotiations, did it?

A No, it did not.

Q Thank you, sir.

Now, Mr. Colavito, yesterday there was introduced in evidence certain letters from the union to the independent association.

They were marked General Counsel's Exhibits

No. 25 through 58 relating to the union's position with respect to the inclusion of Balfour, Weatherguard, Esco, and Penner in what independents said was the bargaining unit.

Do you recall those letters?

A Yes.

Q Did you furnish those letters or copies of those letters to Mr. Blyer?

A Yes. I or the office die; yes.

Q Did you furnish him with all correspondence on the subject of Esco, Weather guard, Penner and Balfour that was either sent by you to the associatin or the association to you?

A I don't know. As I said, I'm not so sure if I gave it to him or the office provided for him.

MR. ISRAEL: May I have this document marked Respondents' 5, please?

(Thereupon, the document referred to marked Respondent-Association Exhibit 5 for identification, of this date.)

Q Can you identify this document, Mr. Colavito?

(Handing.)

A Yes. It is a letter dated June 30, 1975, from Spigner, Irving Spigner, dealing with Esco Iron Works and Weatherguard and Herbert Penner protesting our interpretation of that question.

MR. ISRAEL: I offer Respondents' No. 5.

JUDGE FRIEDMAN: Date of the document, I'm sorry?

THE WITNESS: June 30.

MR. FRIEDMAN: No objection, your Honor.

JUDGE FRIEDMAN: Received.

(Thereupon, Respondent-Association Exhibit 5 for identification, received in evidence.)

Q Now, Mr. Colavito, did the union respond to that letter in writing?

A No. I think it was--we felt it was self-serving. We had sent out letters previous to that.

MR. ISRAEL: May I have this document marked Respondents' No. 6?

(Thereupon, the document referred to marked Respondent-Associatinn Exhibit 6 for identification.)

Q Mr. Colavito, can you identify Respondents' Exhibit No.6?

(Handing to witness.)

A It is a letter dated Jun 30, dealing with the same subject matter, from Irving Spigner, relating to Balfour.

Q Do you recall receiving that document?

A Yes.

MR. ISRAEL: I offer this document.

MR. BLYER: No objection, your Honor.

JUDGE FRIEDMAN: Received.

(Thereupon, Respondent-Association Exhibit 6 for identification, received in evidence.)

Q Did the union make any written respnnse to that letter, Mr. Colavito?

A No.

Q Now, Mr. Colavito, how many meetings did you have with the Association prior to June 30, 1975, collective bargaining meetings?

A Five.

Q Was anything discussed at these five meetings other than the Association's request that it receive the Allied contract?

A Yes. We discussed the clauses individually after first was a lump sum basis. They set a pre-conditinn that they won't discuss any until they got an agreement on us agreeing to all the differences. Then we discussed individual clauses because we wanted them to address themselves to how each clause affected particular companies.

So if we needed to modify it we would be able to ex amine it.

We discussed the athorizations. We said that we would recognize some to be included in the bargaining and some others.

We did not object to Walter Balfour being part of the negotiating committee. We objected to his being a member of the bargaining unit. They proposed some clauses that would serve the same purpose, all-inclusive clauses, what we call most favorite nations clause which meant they would take the Allied agreement in another form, whatever agreement--they would get all the differences themselves.

We discussed, of course, the last--the proposals in which they gave us a full contract proposal. We discussed our proposal and their proposals.

We had some few proposals for them. I think I may have left something out but basically that was it.

Q _ou discussed your monetary proposals?

A We never got to them. We never got to them. They-- We discussed theirs, you know, when they gave us back the proposal.

Q Did you presen t them with written demands containing monetary proposals?

A We presented them with--I don't think we had a figure down for a wage increase we were talking about. We asked for a general increase, substantial increase, I believe the terminology was.

We did not have a specific figure fr a general wage increase. And as far as the funds go, it would be the same as whatever was werked out with the Allied bidding metal industries, that was generally the practice in the industry, throughout the companies.

Q Do I understand you to say that in the five meetings you never specifically told them whage wage, specifically what amount of the wage increase you wanted.

A We never got to it.

Q That means you never said it?

A Yes, yes. We never gave them a specific figure.

Q Did you tell them the duration of the contract you were looking for?

A We were looking for one year agreement, that was part of our proposals.

Q Did you give th em a list of any betterments and fringe benefits such as vacations or sick leave or holidays; anything to that effect?

A Well, as I said, the funds were generally to be worked out on an industry basis. There were improvements in vacation benefits, I think, and holiday benefits. If you call those fringe benefits.

And language questinns, job security and so forth.

Q Did you tell them what betterments you wanted in the vacation clause, specifically?

A I believe it was part of the proposals.

Q Were there written proposals?

A I believe so.

Q Which had specific items but no specific wage increase?

A I don't remember what--I have to look at the agreement -- the proposals. I don't recollect fully. If I had a copy of the proposals I can say for sure.

Q Did the proposal contain a provision that whatever the Allied negotiated with respect to the various funds, this Association would take the same changes?

A No. Not in the proposals. That came up in the stipulation after the contract expired, after--from July 1st on, a stipulation was worked out,and that's where that first generally appeared.

We asked for an increase in contributions to say the vacation fund or pension fund without naming--I don't know if they put on a specific figure. Maybe we did not.

We did not, whatever worked out in the proposal.

We did not say that in the proposals.

Q What is this reference you are making "whatever worked out" the Allied--

A That only arose to the stipulation that was developed after the contract expired.

Q Let us focus in pre-July 1, 1975.

During the negotiations did you ask a specific increase in specific funds?

00

A No. We never got to it.

Q Incidentally, was this the first time you had negotiated with this Association?

A Yes.

Q When did you learn this Association had been formed?

A I think in the springtime.

Q You were rather displeased by that, were you not?

MR. BLYER: Objection, your Honor. It is irrelevant.

Q Did you--

JUDGE FRIEDMAN: Sustained.

Q Mr. Colavito, did you instruct any of your business agents to attempt to dissuade any of the members of this Association from negotiating through the independent association?

A I answer that, no, not at all. In fact we reoognized the Association. We did not have to. We voluntarily recognized the Association.

Q Excuse me, sir, did you notify the Association that you did not have to recognize them; is that what you said?

A I'm say8ng that we had the choice of recognizing them or not recognizing them. We recognized the Association when they informed us that they formed an association.

Q Who advised you you would have a choice of electing to recognize or not to recognize the Association for bargaining purposes?

MS. HARPER: Objection.

MR. BLYER: Objection, your Honor.

JUDGE FRIEDMAN: Sustained.

Q (By Mr. Israel) Mr. Colavito, do you know if any of your business agents spoke to any members--any of the members of this Association and asked them to resign from the Association?

A No, I do not know of that.

Q Now, at the time you were negotiating with the independent association, were you currently negotiating with the Allied?

A Yes.

Q Did you have meetings through the month of June?

A With Allied also, yes.

Q Approximately how many meetings did you have with the Allied?

A About the same.

Q Were the negotiations with Allied substan tially different in content than you have described with the independent?

A Well, as I said, they don't -- they focused on the-- on wanting the differences. The Allied--they wound up with a proposal to take their old contract for three years, in changes at all, wages, funds, or anything, but the independent wound up, which is a few cays later, with everything [illegible] radically revised downward, which went beyond the Allied proposal, the Allied agreement.

Q In your negotiation with Allied, did you ask Allied specific amounts of wage increases?

A Yes. Towards the end we did.

Q Was that specific request for a wage increase also made at any time prior to July 1, upon the independent association?

A We never got to it. We got their proposal- we examined it and they were down in the cellar.

Q Were there any specific requests of the Allied for vacation, holiday or sick leave increases?

A Not particularly. We did not--I think we revised our wages, gave them a wage proposal and we gave them a rringe proposal which would be covering all the funds, I believe.

Q Prior to July 1, did you give the independent association your revised fringe proposal?

A I said we never got to it.

Q Did you at any time ever give the independent association any fringe proposal?

A Yes. After the stipulation, after the strike--

Q Prior to July 1?

A No.

Q So that it is a fair statement that prior to July 1 in your negotiations with the independent association you never made any specific dollar demand for either any of the funds or for the wages?

A I think that's correct.

Q Now, were you at the time you were negotiating with the Allied and also negotiating with the independents--independent, negotiating with anyone else?

A Yes. Negotiating with a lot of independent shops.

Q Single shop units?

A Yes. And an association, too, small association.

Q What association was that?

A That would be the Wire Workers Association.

Q Their contract expired similarly on June 30?

A Yes.

Q Did you give the Wire Workers Association, did you give them a specific proposal on wage increases?

A That was not--I was not involved. I would assume--

MR. BLYER: Your Honor, I object.

Mr. Colavito is not in a position, one, to testify.

Second, I don't know the relevance of what was done with the Wire Workers in this case. I mean--

especially to the issue of impasse. So I would object on those two grounds.

MR. ISRAEL: I think it is important.

JUDGE FRIEDMAN: I think it leads up to what occurred.

I am going to overrule your objection.

Q (By Mr. Israel) Did you say you believe that a specific proposal was or was not made?

A No. I said I was not involved in those negotiations. You know, prior to July 1, so I cannot say what took place, specifically.

I would assume, though--I am only assuming that--

MR. BLYER: Your Honor, I'd like to object to his assumptions. It is unreliable.

JUDGE FRIEDMAN: Yes, I will sustain that.

Q Did you personally participate in any negotiations with any independent shops, single shop units?

A Yes. Some.

Q Was any specific proposal made with respect to any of the shops where you participated in negotiations with respect to wages or the funds?

A Now you are talking before July 1st?

Q Yes. All before July 1st.

A Yes, I did.

Q Specific proposals were made?

A Yes.

Q Now, on July 1 you struck the members of the independent association; is that correct "You," meaning the local.

A Any shop that had not signed the agreement was struck on July 1st.

Q Did you instruct the members of the Allied Association?

A Yes.

Q The members of the Wire Workers Association?

A Yes.

Q Most independents?

A Those that were not signed up on July 1. They signed up on June 30 and on July 1st was the first day people were signing.

In the ending of July 30 and July 1st was the first that employers were signing up. Anybody that was not signed up would be on strike.

Q How many independents were negotiating with the local at that time?

A You are talking about aside from the associations at that time?

Q Yes.

A I will take a guess of 40. Sorry. Maybe 50.

Q Of the forty or fifty, h ow many signed up in the month of July?

A In the month of July, I'm only guessing. I assume about

20, 25. I don't know.

Q So approximately half settled and half went on strike; is that right?

A They may have been on strike three or four days, you know, in the process.

Q Now, with respect to the 25 or 20 that signed, did they agree to specific wage increases and specific fund increases or did they agree to be bound by the terms of someone else's contract?

A I can only answer that partially. They agreed to specific wage increase. They agreed to specific fringe benefits. They agreed to again in terms of the contributions to the funds, whatever was worked out with the Allied would be adopted by them.

Q Did all of the contracts which were signed with the independent shops in July have a common expiration date?

A All that--you mean in July?

Q Yes.

A Yes, it was a one-year agreement with the proviso to take a longer agreement if it was worked out.

Q What was the proviso with respect to the terms of the longer agreement if worked out? What were the wages to be?

A I think whatever was worked out. I don't--referred to as Allied or referred to as Standard Independent, I don't remember now. I have to look at the stipulation.

Q In other words, the parties agreed to a one-year contract, but further agreed to--

A They would take the second and third year of what was worked out. I don't know if it said Allied or said independent agreement.

Q Mr. Colavito, were these 20, 25 people getting the independent contracts? Were these not the indepdennts?

A Yes.

Q How could they be bound by the second or third year by an independent contract? Wasn't that their contract?

A I said they would pick up--any improvements made in the second and third year of a longer contract, they would pick up for their second and third year.

Q Improvements made in a negotiation with whom?

A I say I would have to see if I referred to Allied or Allied and.

Q Who comes after the "and"?

A I don't--

Q When you say Allied or Allied and, who comes after "or" and who comes after "and"? What were the choices?Allied was one possibility. Who else could they have been tied with?

Did you tie them to any contract negotiated with this independent association?

A No.

Q You did not?

A Of course not.

Q I agree, of course not.

Did you tie them to any contract negotiated with one particular independent company?

A No, we did not.

Q Did you tie them to the Wire Workers Association?

A We did not.

Q So obviously you had to tie them to the Allied.

A Not necessarily.

Q Who else would you tie them to?

A Well, the contributions to the funds were with the Allied; absolutely.

Q Yes. But the wages and fringe benefits, other than the funds for the second and third year, who else could they be tied to?

A You are right. It would be the Allied.

Q It had to be the Allied?

A Yes. Th e second and third year.

Q So that the terms of any second or third year contract,whether it be wages, fringe benefits or contributions to the fund, were tied to any final settlement worked out with the Allied?

A I say I don't know how it was traded. It might have been phrased with the industry and Allied or Allied [illegible] or [illegible] other.

and industry or one or the other.

Q Forgive me, but I thought we had resolved that.

A You are asking me how it was phrased?

Q All right. If it was phrased with the industry or phrased with the industry or Allied, what does the expression "industry" mean? Whose contract is covered by "industry"?

A Industry agreement, all right.

Q Now, the independent industry contract, was that the independent association any longer?

A Never was.

Q Independent industry was not the Allied, was it?

A No. It was not referred to that way.

Q It was not the Wire Work Association?

A No.

Q Who then, at that point in time, was yhe independent industry other than the people who were then signing contracts with you?

A Again we are talking about the second or third year of the contract, any changes made in those agreements.

Q Yes.

A Now, the Allied generally is everybody else. The changes that take place in thelanguage of the contract is generally worked out in the first year of the contract. The second and third year of the contract generally deal with fringes. A holiday may take place in the second or third year instead of the first year. So the second year of a contract the Allied picked up a holiday, it would be picked up in the industry contracts the same day, maybe a different holiday, they would pick up a holiday. Whatever it would be, the language is taken care of the first year.

What you have in the second and third year is really any improvements in the funds or in the fringes of the contract.

Really I never seen in language the second and third year of a contract.

Q As negotiated between 455 and the Allied Building Metal Industry?

A Yes. Generally.

Q Now, at any time pre-July 1, did you offer to the independent association to sign a contract containing any economic changes, economic change being wages, fringe benefits and funds, that you might subsequently sign with the Allied?

A Did I offer them?

Q Yes.

A No.

Q Did you offer that to them or the Association, the independent association, any time in July of 1975?

A No.

Q Now, Mr. Colavito, would you state who are the members of the negotiating committee in the month of June for the independent association, if you recall?

A The employers?

Q Employers.

A Irving Spigner, Peelle, you guess, Doyle, Shiner or Steiner, I think Balfour.

Q Now, were you the chief spokesman for the local?

A Yes.

Q Was Mr. Irving Spigner the chief spokesman for the Association?

A Yes.

Q Can you describe the role, if any, that Mr. Peelle played in these negotiations?

A He spoke, you know, they all spoke on the employers' side. Spigner was the chief spokesman. He made some remarks as they all did during the course of the negotiations.

Q Were you at any time advised in the month of June that Mr. Peelle was chairman of the Association's Negotiating Committee?

A I think I have seen something to that effect on a letter head.

I don't think they made any reference to it.

Q Now, you testified yesterday that there came a time when you signed a contract with Dextra.

A Yes.

Q When was that?

A When?

Q Yes. Approximately?

A The end of July, beginning of August.

Q Dextra up until that time you knew to be a member of the Association?

A Yes.

Q And you knew the Association to have been bargaining on behalf of Dextra, amongst others; is that correct?

A That's correct.

Q Will you describe the circumstances under which you negotiated a contract with Dextra?

A He informed our representative that he had an understanding with the--

Q Had what?

A He had an understanding with the Association that he had the right to withdraw the authorization and he was looking to negotiate an agreemen t, and he informed us of that.

We had some discussion in terms of that with him, and we worked out an agreement.

Q Now, did he inform you orally--I'm sorry, you say he informed your representative?

A Yes.

Q Did not inform you personally?

A I wasn't involved personally; no.

Q Was that information given orally or in writing that he had an understanding with the Association?

A I think both.

Q Do you have a copy of any--

A He informed us of that information in a written letter, I believe, and he did that orally, too.

Q Did you have that letter with you, sir?

A Do I have it with me? No, I don't.

Q When the local received that letter, did it check the authenticity of the statements with Mr. Spigner?

A I wasn't involved, so I cannot say. I know our attorney were probably involved with his attorneys. So I am not so sure.

Q You have no information on that?

A No I have no exact figure.

Q Sometime in August a contract was negotiated with Dextra?

A Yes.

Q Do you know generally the terms of that contract?

A I think it was the independent--the stipulation that was being signed by the independent employers during that period of time.

Q In other words, for the first year you agreed upon language and wages; is that correct?

A Wagds, fringes, and picking up of the contributions and whatever was negotiated with the Allied Association, and the second and third year, you know, longer contract, whatever was negotiated.

Q The second and third year was to be in terms of the economics as you may call them, whatever the Allied settled for?

A As I said, I'd like to look at the stipulation I have in front of me but generally that's how it worked out.

Q Do you have the Dextra stipulation with you today?

A No. I'm saying the stipulation is a standard stipulation form.

Q All the employers who signed with you, including Dextra, signed a standard stipulation?

A Well, one employer, I think, modified or had just a one-year agreement without a second and third year obligation on either of the two parties. I think one employer.

Q Now, when a settlement was arrived at with Dextra, with the--did the employees of Dextra who were members of your union vote on whether or not to accept that settlement?

A I couldn't tell you. I was not involved, as I said.

Q You have no knowledge of that subject?

A No. I think they had given the power with all -- all the members of our union give the Negotiating Committee the power to negotiate an agreement.

Q There did come a time when the Allied made an offer and there was a vote, was there not?

A Yes.

Q And this vote was taken of the employees of the Allied firms?

A All the employees whose contracts expired at a particular date voted on whether to strike or to accept the last offers made by the employers.

Q I am talking about at the point in time when the Allied made a final offer, which was ultimately accepted, who voted on whether or not to accept the--

A Talking about 1976.

Q January of 1976. Who voted on whether or not to accept that offer.

A Only the Allied employees. We were ordered to do it that way.

Q Had these employees previously given you the power or the authority to settle without a vote of ratification?

MR. BLYER: Objection, your Honor, to the relevance of that. He is going into internal union affairs.

MR. ISRAEL: I am going into the question of whether employees of Dextra voted on the Dextra contract, and subsequently whether employees of any of the members of the Association voted to ratify other offers of settlement which was made. That's relevant to see what unit we are talking about, what is the unit that the union considers appropriate?

MS.HARPER: I don't think the internal affairs of the union, the method in which they ratify or don't ratify something has any bearing on the validity of any contract.

The Board has held over and over again to that efect.

MR. ISRAEL: I am not interested in the internal affairs of the union. We have a situation where at the very end the claim is that the contract negotiated with five employer members of the Association is binding on 13 or 14 other employer members of the Association who might have withdrawn their authorization.

I'm interested in finding out what is the unit the union considered appropriate at that time. That could be determined by who voted--

MS. HARPER: It could not be determined by who voted because they had various methods of ratifying. Sometimes officers decide, sometimes the employees decide, sometimes the international decides, and I think that has absolutely no bearing on what is an appropriate unit and what is not. They do not--in some instances there may be some ratification before previous authorization.

So I think that--just hear me out, sir -- I think that the method that the union used to ratify any contract is of no concern here, has absolutely no relevance to this proceeding.

MR. ISRAEL: Your Honor, I am not interested in finding out what the union's internal processes are. I am interested in finding out how the union viewed the bargaining unit at different stages in time.

MS. HARPER: Why don't you ask that question? You'll get a direct answer.

MR. ISRAEL: That calls for a legal conclusion. I am interested in the facts.

MS. HARPER: The ratification is a fact which you have no interest or has no relevance to this proceeding.

MR. ISRAEL: It has very much interest. I don't know why there is such a great attempt to hide what the--

MS. HARPER: There is nothing to hide. But I think as a matter of fact we have gone very far afield and I do not--

JUDGE FRIEDMAN: I don't think we are far afield at all, Miss Harper.

MS. HARPER: When we go into what happened in 1964 and 1965, I think we are going far field.

JUDGE FRIEDMAN: That may well be--

MS. HARPER: Back--

JUDGE FRIEDMAN: That may well be. I accepted it for that purpose only, but also to show that basically some of the negotiations--the way they arose and the way the association arose-- I'm going to take it. I'm going to overrule your objection.

Go ahead.

MR. ISRAEL: May I have that last question read back?

JUDGE FRIEDMAN: Read the question.

(Question referred to was read by reporter.)

Q (By Mr. Israel) I am talking about the employee members of the Allied who voted in January on the Allied offer.

My question was: Had those employees previously given the local the authority to settle a contract without a ratification vote.

A We always are given the authority to negotiate an agreement, and when we deal with the shops, as the contracts expire on a particular date as we had in the industry, always brought the membership back together, by giving us the authority to ratify an industry settlement, okay. That's always been a practice. It has been a change year ordered internally to have after six months strikes to separate the Allied employees from the rest of the employees who are members of our organization and have them vote separately even though the effects of that settlement would affect the welfare of other employees who were working for other employers, whose contracts expired the same time, and that was a procedure ordered on us by our own organization.

Q Was that vote, the vote of the Allied employees, that was the only vote that was taken during the course of the strike to accept an offer; is that correct?

A Yes. Because we had previous authorization.

Q All right.

Direction from the vote came from the international sometime in December; is that correct?

A Yes.

Q Therefore, the employees of Dextra did not vote on the settlement that was made with Dextra?

A No. We have previously authorizatinn from the membership to settlement within certain guidelines of the contract to get a settlement, and we got it.

Q Now, you recall shortly after you settled the contract with Dextra th-t the independent association filed charges with the National Labor Relations Board against the local involving this settlement with Dextra, do you not?

A I believe so. It was dismissed.

Q I'm sorry, you believe it was dismissed?

A I think so.

MR. ISRAEL: May I have thjis marked, please?

(Thereupon, the document referred to marked Respondent-Association Exhibit 7 for identification.)

JUDGE FRIEDMAN: I presume, Mr. Israel, that the purpose of this is to show that the union opened the door; is that it? Breakup of the Association?

MR. ISRAEL: That initially was so, but there is a secondary purpose, and that is--

JUDGE FRIEDMAN: The reason I am asking this is because I made a ruling before on matters which could possibly go into union internal affairs and I took it for the purpose for which I just stated.

MR. ISRAEL: I am not going to proceed further on that.

Q (By Mr. Israel) Mr. Colavito, can you identify this as the document--this document as being the charge that was filed that you say was dismissed?

(Handing.)

A No. It is a little vague with me, but I don't think I got involved too much on it, so I think that was the one that was dismissed, yes.

MR. ISRAEL: I would offer that, your Honor.

JUDGE FRIEDMAN: Mr. Blyer?

MR. BLYER: I have no objection, your Honor.

JUDGE FRIEDMAN: All right.

Received.

(Thereupon, Respondent-Association Exhibit 7 was received in evidence, as of this date.)

Q (By Mr. Israel) Now, Mr. Colavito, you do recall that that charge was dismissed, do you not?

A I said I think. I am not--there has been so much paperwork in this past period of time.

MR. ISRAEL: Would you mark this Respondents' No. 8, please?

(Thereupon, the documet referred to marked Respondents' Exhibit 8 for identification.)

MR. BLYER: We can stipulate that if you like.

MR. ISRAEL: Fine.

MR. BLYER: I have no objection, your Honor, to the introduction into evidence of--

JUDGE FRIEDMAN: I don't even know what it is.

MS. HARPER: Dismissal of the charge.

don't know what the relevance of this is, your Honor.

Anyone can file a charge and get it dismissed. What relevance would that have to the--

MR. ISRAEL: Let me offer it first, please.

I offer the document marked Respondent's Exhibit No. 8.

MR. BLYER: No objection. I do have a comment to make about it, but--

JUDGE FRIEDMAN: I think Miss--

MS. HARPER: I don't see the relevancy. Once something is dismissed, I think it has no relevance to the proceeding before us.

It may be of interest, but it has no relevance.

MR. ISRAEL: I'm not going to litigate the charges against--

MS. HARPER: If it is not relevant here, unless we establish its relevance, I don't see why we should encumber the record with a great deal of additional paper.

MR. ISRAEL: Mrs. Harper, we are nog encumbering the record.

MS. HARPER: I think you are.

I think a good deal of this has gone far afield. Apparently the Administrative Law Judge does not agree with me, but I really think we ought to get to the issues before us and and 10 or 15.

MR. ISRAEL: I am interested in whether an impasse was reached in negotiations.

MS. HARPER: This would not establish that.

MR. ISRAEL: I think it would. It is a determination by the Second Region as to whether an impasse was reached in the negotiations with this Association.

MR. BLYER: If I may, your Honor, that's where I differ with Mrs. Harper. I don't think--

JUDGE FRIEDMAN: I think--

MR. BLYER: -- in fairness we can rely on conclusary remarks in this dismissal language. In fact, I'm submitting that Mr. Israel will have to go into het details here, that we should not take the statement here -- "The legitimate impasse reached," a reference was made in the dismissal letter to a conclusion that such was the case with regard to--I don't know if this is just Dextra or the Association or what.

JUDGE FRIEDMAN: Well, in any event, I'm not bound by a determination made by a Regional Director.

MR. BLYER: My only point is this: If he is going to establish impasse, he cannot do it by this document. I'm saying you do have to go into the facts surrounding it.

JUDGE FRIEDMAN: That's all.

Of course--

MS. HARPER: This is not a litigated matter. Therefore, I see no relevance to it.

JUDGE FRIEDMAN: Would you prefer to have the charge stand without an explanation of why it was dismissed?

MS. HARPER: No. I think that ought to be stricken now, too, because it has been shown to have no relevancy.

JUDGE FRIEDMAN: You did not object to it in the first place.

MS. HARPER: I did not know what he was leading up to. If this is what he is coming to, I think that should be stricken as well.

JUDGE FRIEDMAN: Well, I will take it. But it is not--I don't consider it binding in any way upon me in any way in my determination.

MS. HARPER: Thank you.

JUDGE FRIEDMAN: In fact, I won't enter the evidence of any sort, except that a charge was dismissed, that's all.

(Thereupon, Respondent-Association Exhibit 8 for identification, received in evidence.)

Q (By Mr. Israel) Mr. Colavito, did you at any time personally advise any representative of Region 2 of the National Labor Relations Board, that the negotiations between Local 455 and the independent association had collapsed?

A Collapsed?

Q Yes.

A We were-- We had the number of meetings after June 30. I don't know how you areusing the word "collapse," sir.

Q I'm asking whether you used the word--

A I used the word "collapse"?

Q Yes.

A I don't think I did.

Q Were you, sir--you -- Did you give a deposition to the National Labor Relations Board in connection with the harge filed in the Dextra matter?

A I don't remember if I did on Dextra or not.

Q Were you involved in the Dextra matter at all, sir?

A Not directly; no.

Q Were you involved in it with the National Labor Relations Board in the Dextra matter?

A Not that I remember.

Q Do yourecall who was on behalf of th e local?

A I would assume it would be the business agent.

Q And who is that?

A That would be-- it could be either an executive board member or it could be the business agent who handled that territory. Normally that would be Tessler.

Q Tessler?

A Yes.

Q Did Mr. Tessler ever advise that he had advised the National Labor Relations Board that the negotiations with the Association had collapsed?

MR. BLYER: Objection, your Honor.

JUDGE FRIEDMAN: Sustained.

MR. ISRAEL: May we take a five-minute break at this point?

JUDGE FRIEDMAN: Sure.

(Whereupon, a short recess was taken.)

JUDGE FRIEDMAN: Mr. Colagito, you can step down for the time being.

(Whereupon, the witness was temporarily excused.)

JUDGE FRIEDMAN: Would you rasie your right hand, sir?

Whereupon,

LORENZO RUGGIERI,

being first duly sworn by Judge Friedman, testified on his oath as follows:

JUDGE FRIEDMAN: Please be seated.

State your name for the record, please.

THE WITNESS: My name is Lorenzo Ruggieri.

DIRECT EXAMINATION

Q (By Mr. Friedman) Mr. Ruggieri, are you now working?

A No.

Q Before July 1 of 1975, did you have a job?

A Before July 1st?

Q Yes.

A '75?

Q Yes.

A Yes.

Q And who did you work for?

A Roma Iron Works.

Q That is R-o-m-a Iron Works?

Is that correct?

A Right.

Q How long did you work there for that company?

A About eight years.

Q What did you do for them?

A I was a finisher.

Q Are you a 455 member?

A I still am; yes.

Q And how long have you been a 455 member?

A Since we joined the union with Roma.

Q How long would that be, approximately?

A Five, six years.

Q Do you belong to any other labor union?

A No.

Q Did you go out on strike first?

A Yes.

Q Are you still out on strike?

A Yes.

Q At the time, how many employees did Roma have doing production and maintenance work like yourself?

A At that time about nine.

Q And did they all go out on strike at that time?

A Yes.

Q And to your knowledge, are they still on strike?

A To my knowledge, yes.

Q Now during the course of the strike have you been on the picket line?

A Yes. A few times. Sure.

Q Qnd, sir, when was the last time, approximately, that you were there?

A On the picket?

Q Yes. Or at the shop.

A At th eshop, I was there about two months ago.

Q Now, at that time did you notice whether the company was operating and doing business?

A Yes. I seen a few fellows there, about three fellows work inside.

Q Were these three fellows employees who were working for the company before the strike?

A No.

Q Now, Mr. Ruggieri, do you recall receiving a phone call in November of 1975 from Mr. Romanelli?

A Yes. I recall that.

Q Who is Mr. Romanelli?

A He's the boss of Roma.

Q And on the phone what did he say to you and what did you say to him?

A Well, he called me up. He wanted to talk to me, you know, about going back to work for him, and all that. He said he wanted to talk to me. I went to his place.

Q When did you go?

A The next day.

Q I'm sorry?

A The next day.

Q When you got there, who was there?

A There was Mr. Romanelli, it was Frank Carpentiere.

Q C-a-r-p-e-n-t-i-e-r-e, I believe. Who is Mr. Carpentiere; do you know?

A It's supposed to be the partner. Now as far as that I am not sure.

Q Okay. Now, was anyone else there when Mr. Carpentirer and Mr.--

A The bookkeeper was there.

Q And where did you talk to one another?

A Where?

Q Yes.

A In the office.

Q And what did they say to you and what did you say to them?

A Well, they want me to join Local 18. They says the benefits are good and with Local 455 they couldn't afford, you know, and all that.

So I says that I was not interested at that time.

Q Go on.

The last thing--

A I was not interested in Local 18, and he says they could not keep on with Local 455, which I mention to sign the contract for, you know, with. So they says they did not go with Local 455, they cannot afford it. They rather close the shop instead of going with Local 455.

Soo soon after, I left, and I went home.

Q Now, during that conversation did they say anything about whether they would or would not sign a contract with Local 455?

A Yes, they say that.

Q What did they say?

A They said they would nto sign, never sign a contract with Local 455.

Q Who did most of the talking on behalf of Mr. Carpentiere?

A Mr. Romanelli did most of the timing and Mr. Carpentiere was also talking but mostly it was Mr. Romanelli.

Q Now, do you recall receiving a second phone call from Mr. Romanelli in January of 1976?

A Yes.

Q And on the phone what was said to you and what did you say to Mr. Romanelli?

A Well, on the phone was the same story, that he wanted me to join with Local 18, they need me, they want me to go back to work, you know.

So I says--he says "Come on down, we talk," you know.

Q What happened when you got there?

A I went there the next day--

Q I'm sorry. Who was there when you got there?

A There was again the three of them, Mr. Carpentiere, Mr. Romanelli and the bookkeeper.

Q Okay.

And what did they say to you and what did you say to them?

A Well, Mr. Romanelli first says that to joint Local 810 because the same routine, they couldn't afford with Local 455, they rather close, they'll never go back to 810--

Q Do you mean 810 or 455?

A I'm sorry. Never--they never go back with 455, and he also mentioned that if I couldn't sign the paper then that they will not never hire me again.

Q Now, at that time did they have anything with them? Did they have a piece of paper?

A They have a few cards. Mr. Carpentiere had a few cards in his hands, which he showed me that he wanted me to sign.

Q What were they, sir?

A They were petitions for Local 810.

Q What happened--do you remember anything else that happened in this conversation?

A Well, I told him that I was not sure about 810, because I had no--nothing to show me on the benefits that they have, and legal holidays and so forth.

So he asked me if I want to go down to Local 810, which he was going down that day. I agreed.

I went with him -- that Local 810.

Q When did you go, sir?

A The same day.

Q Okay.

A That morning.

Q And how did you go? By what means of travel?

A I went with his car. With him.

Q Was there anyone else besides him and you in the car?

A No. Myself and Mr. Romanelli.

Q What happened when you got down to Local 810's office?

A We went down. This gentleman was, that came in the office. We start to talk, you know. Mostly they start to talk. This gentleman which I don't recall his name, and Mr. Romanelli about the business.

MR. ZISKIN: I am going to object to the question unless he can identify who was speaking. Otherwise it is totally improper.

Q Mr. Romanelli--

JUDGE FRIEDMAN: Sustained.

Q Mr. Ruggieri, this conversation, where did it take place?

A In Local 810s office.

Q Now, when you got into the office did--were you introduced to anybody?

A Yes. To this gentleman.

Q All right. How were you introduced? Did the person give you his name?

A He come in. He says, "I'm Mr. So and So," and that's it.

Q Did he describe his position as you can recall?

A He took the place of another lawyer. He was supposed to meet a lawyer down there and took his place there because he was not available.

Q Well, the man who spoke wigh you in the 810 office, I'm not talking about Mr. Romanelli, did he tellyou his name?

A He mentioned his name, yes, but I don't recall it now.

Q Did he tell you anything else about himself? Who he was, what job he had?

A I don't recall it.

Q Well, where did the conversation take place?

A In the office down Local 810.

Q Did you speak with this man who was introduced to you at the 810 office?

A I asked him about--

MR. ZISKIN: Objection.

Q The answer is, did you speak to him.

A Yes.

Q Woth you at the time, was there anybody?

A Mr. Romanelli.

Q Now did this man who introduced himself at 810 offer you to do anything, offer you anything?

MR. ZISKIN: Objection. Unless the General Counsel can establish who this conversation allegedly took

took place with there is no way to cross-examine it. It is totally improper.

MR. BLYER: Your Honor, I would note that this conversation is taking place in the offices of Local 810. I think it is a fair assumption that it was an official or someone from 810 who was speaking to this gentleman. And I don't think--Mr. Ziskin is prejudiced. 810 is his client. He can certainly inquire whether or not any of his clients spoke to Mr. Ruggieri or anyone else. I think I should not be precluded from being permitted to go into this.

MR. ZISKIN: Your Honor, I don't think that's a fair assumption at all. Local 810 is a large organization. It has a welfare fund which is located in the building, various trades people who come into the building. The building is an open premises. People can enter and leave that building t wi[illegible]. And there is no establishment here as to who this conversation took place with. No foundation.

JUDGE FRIEDMAN: I'll have to sustain the objection. There is no establishment of agency or authority.

Q (By Mr. Blyer) Mr. Ruggieri, was the man who was introduced to you named Dennis Silverman?

A Mr. Silverman, which I heard the name before by Mr. Romanelli, was not Mr. Silverman there. It was another gentleman that took his place.

Q Did you see Mr. Silverman on this day when you went in?

A No.

Q Was it Mr. Gould?

MR. ISRAEL: Your Honor, I object. He was asked if he knows the name--

JUDGE FRIEDMAN: He is exhausting his recollection.

Go ahead.

Q Was it Mr. Gould?

A I don't remember.

Q Was it a Mr. Brickman?

A I don't remember.

Q Okay. Mr. McGuire?

A I don't remember.

Q All right.

During the course of the time that you were in this room with this gentleman who you cannot identify, Mr. Romanelli, did Mr. Romanelli say anything to you?

MR. ZISKIN: I am going to object. What relevancy is this?

MR. BLYER: You don't know. Let the man testify.

JUDGE FRIEDMAN: Overruled for the time being. I'll entertain a motion to strike.

THE WITNESS: Repeat the question, please?

Q While you were in this room with this man you were unable to identify and Mr. Romanelli, did Mr. Romanelli say anything to you?

A Yes. He was telling me about the goods of Local 810, the welfare and all that, and he also said that, you know, join Local 810 and we will have, you know, plenty of work. He said it's better than Local 455.

Q Did he make any reference to what would happen to the benefits that you had been driving from 455?

MR. ZISKIN: Objection.

MR. ISRAEL: Objection, your Honor.

MR. ZISKIN: Leading, your Honor. The witness has not--the--he has nto established this cannot--

JUDGE FRIEDMAN: Sustained.

Q Do you remember anything else that Mr. Romanelli said to you?

A Well, Mr. Romanelli, that day we went down to Local 810, he was saying that--

Q I am talking about in the room, in the room.

A In the room. Local 810.

Q You have told me some things already. I am asking if you remember anything else, that's all.

A He told me that all the benefits that I had put--

JUDGE FRIEDMAN: When you say "he," who are you talking about?

A Mr. Romanelli, all the benefits I had put in Local 455 would be switched to Local 810 and I wouldn't lose anything I put in this past years.

Q Were you offered to do anything while you were there?

A Yes. I was offered to--

JUDGE FRIEDMAN: Mr. Israel?

MR. ISRAEL: Excuse me. Are we talking about Mr. Romanelli, are we talking about this unidentified official? I'd like to identify--

Q (By Mr. Blyer) Did Mr. Romanelli--

A I was talking about Mr. Romanelli so far.

Q Mr. Romanelli offer you anything?

A Well, what I said--

Q Okay.

MR. BLYER: Thank you very much, Mr. Ruggieri.

I have nothing further.

JUDGE FRIEDMAN: Mrs. Harper?

MS. HARPER: No.

MR. ZISKIN: May we see affidavits, please?

JUDGE FRIEDMAN: Yes.

Would you supply the affidavit, if there is one?

MR. BLYER: I wouldn't call it an affidavit but it is a statement within the meaning of the Jencks rule.

JUDGE FRIEDMAN: Whatever it is.

MR. SPIGNER: Your Honor, I am going to excuse myself for a short while.

JUDGE FRIEDMAN: Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

Mr. Israel.

, CROSS EXAMINATION

Q (By Mr. Israel) Mr. Ruggieri, you have testified that on one or more occasions Mr. Romanelli told you that he would not or he would never sign with 455; is that correct?

A Yes.

Q At the time or times that he made that statement to you, did he tell you why he would not sign with 455?

A Yes. He said he could not afford to pay the benefits and dues to Local 455.

Q Specifically mention benefits and dues; is that correct?

A Yes.

Q Did he mention the funds, the various funds, the welfare funds, pension funds?

A We had in the conversation few words thrown in which they come to--to that point, you know.

Q Would you tell us those few words, please? Tell us what you recall was said?

A Right. When I went in the office--

Q Excuse me, we are talking about Mr. Romanelli's office now?

A Yes.

Q Okay.

A We were talking with friendship, you know, we had with him. I was telling him to join Local--you know, to sign the contract, not sign, sign the contract with Local 455 and he says he will never sign with Local 455 and he asked me to join Local 810.

He says it is a good loceal, they good good benefits, and the first meeting we had, I told him no, I was not interested.

Q When he told you he could not afford the benefits of dues, did you ask him what he meant?

A Well, he showed me that it owed Local 455 $11,000 in back dues or contribution, whatever he meant, you know.

Q When you say "dues," might he have used the word contributions instead of dues?

A Contribution.

Q Did hetell you that he owed the union around $11,--- at that time?

A Yes.

Q And he told you they were for contributions?

A Yes, contribution, whatever the employer has to pay to the union.

Q Did he also tell you at that time that the union was suing him?

A Which time, sir?

Q Any time, sir.

A Yes.

Q When was that?

A In January, last time I saw him.

Q What did he say about that subject?

A That the union was suing him for the money because he doesn't want to sign with them.

Q Die he tell you the union was going to send the sheriff in to close his place?

A Yes.

Q What did he say about that?

A That they were going to confiscate the machinery.

Q This was told to you in January?

A Yes.

Q Did you at any time ask him why he couldn't afford or why he owed the $11,000?

A Yes. That was spoken amongst the words, you know, that he could nto afford to pay because he just could not afford it. I don't know why. That's his business.

Q I understand that. Did he tell you why he couldn't afford it?

A No.

Q Did you ask him why he couldn't afford it?

A Why ye did not pay?

Q Did you ask him why he could not afford to pay?

MR. BLYER: Your Honor, I object. It is irrelevant if he asked him or not. He was not told anything so--

MR. ISRAEL: I'm sorry, I think--

JUDGE FRIEDMAN: I think the same question has been asked. He said he does not remember but go ahead, you can ask him once more.

Q Whether you asked it or not, was there any discussions as to why he could not afford to make the contributions?

A No, because that's his business. He cannot go into some details between employer an employee which they will never tell you.

Q When he told you the union was going to confiscate the machinery, did you ask him what he meant by that?

A The union?

Q Yes.

A Not the union.

Q Did he tell you someone was going to confiscate--

A The sheriff.came in.

Q Did he tell you who sent the sheriff in?

A He says the sheriff came in to confiscate the money--the machinery.

Q Mr. Rugggieri, Mr. Blyer has handed me a statement, is that your signature at the bottom of that statement (handing)?

A Yes.

MR. ISRAEL: Would you mark this for identification, please?

(Thereupon, the document referred to marked Respondent-Association Exhibit 9 for identification.)

Q (By Mr. Israel) Mr. Ruggieri, is that your signature, sir?

A Yes.

Q Is that your handwriting?

A No.

Q Would you tell us-- Do you know who wrote this statement out?

A I know his face. I mean, I don't recall his name now.

Q Was he a union official?

A Yes; union official.

Q It was not a Board official--representative of the National Labor Relations Board?

A It was a union official.

Q Where was that written?

A Outside the shop there is a luncheonette. We were picketing, you know. So we went in the luncheonette and I gave him the statement.

Q Did you read that before you signed it?

A Sure.

MR. ISRAEL: I have no further questions.

MR. ZISKIN: I have no questions.

JUDGE FRIEDMAN: Any redirect?

MR. BLYER: Nothing, your Honor.

JUDGE FRIEDMAN: All right.

Mr. Ruggieri, you are excused. Thank you, sir.

(Whereupon, the witness was excused.)

JUDGE FRIEDMAN: Will you please rise and raise your right hand and face me?

Whereupon,

ALEXANDER FARKAS

being first duly sworn, by Judge Friedman, testified as follows:

JUDGE FRIEDMAN: Give your name to the reporter and your address.

THE WITNESS: My name is Alexander Farkus.

DIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Farkas, are you working now?

A Yes.

Q Okay. And before July 1st of 1975, who did you work for?

A Roma Iron Works.

Q Is that --

JUDGE FRIEDMAN: I'm sorry.

A Roma Iron Works.

Q Same company that Mr. Ruggieri worked for?

A Yes.

Q And how long had you worked there?

A Two and a half years.

Q And what type of work did you do?

A Iron works.

Q And how long have you been a 455 member?

A Twenty years.

Q Are you still a member?

A Yes.

Q Are you a member of any other union?

A No.

Q Now, did you go out and strike on July 1st of 1975?

A Yes.

Q How many employees do you recall being in the shop doing production and maintenance work at that time?

A About nine guys.

Q And did they all go out on strike?

A Yes.

Q To your knowledge, are any of them now back working in the shop?

A I know that two guys working in the shop.

Q Two guys that went out on strike?

A They were on strike. I know they are working in there.

Q How do you know they are working in there?

A Because I called them; they're working.

Q Who are they?

A The name is--I don't know one of them -- second name -- one is Jimmy Williams and the other one is Bbby. I don't know his second name.

Q And when did you observe them working there? The last time?

A The last time when I was passing by, I'm driving a taxi and I passby with the taxi and I saw them working there so I spoke with one of the guys.

Q Approximately when, that is all I want to know.

A About three weeks ago.

Q Thank you.

During the summer, while you were operating the picket line, did you have a conversation with Mr. Romanelli?

A Yes.

Q Okay. Was anyone else there?

A The first time, no.

Q Okay. What did you say to him and what did he say to you?

A I said to him why didn't you sign up so we could go back to work. I like to go back to work. He says I wants to join the teamsters, he wants to join the 810 Teamsters.

Q Did he say anything about whether he would sign or would not sign with 455?

A No. He said he wouldn't sign.

Q At that time did he show you anything?

A He showed me a paper, a stipulation from the 810.

Q What was on this, what you call a stipulation?

A It's a paper like the Local 810, and it was all the benefits what they are giving for the benefits and if we joined we would get the same things.

Q Who told you that?

A I saw it myself. He gave it to me to read it.

Q Did he give you a copy of it?

A No. He said he got only one paper and he cannot give me no copy.

Q Did he say anything about the paper?

A What do you mean by the "paper"? He said that is from 810, that's Teamsters local.

Q Did he say anything else about 810 at that time?

A Well, he said 810, they give so much benefits and I would not lose anything from my benefits if I joined them.

Q Okay. In about early January of 1976, around the 6th day of June, in the early afternoon, do you recall going down to the shop to see Mr. Romanelli?

A Yes.

Q And when you got there was there anyone else there?

A No. That time was nobody, only--there was nobody there on the picket line.

So I tried to speak to him.

Q When you spoke to Mr. Romanelli, was there anyone else with him?

A Yes. His partner and bookkeeper.

Q What is his partner's name?

A Frank.

Q Is that Mr. Carpentierre?

A Yes.

Q Where did you speak with him?

A Inside in his office.

Q Was there anying special that motivated you to go down that day to talk to him?

A Yes. Because I know that Allied signed up, and I wanted to see if he is going to sign up, then we could go back to work.

Q What did you say to him?

A I said now"Allied signed up, why don't you sign up? Then we could go back to work."

Q What did he say?

A He said he will never sign up. That our officials might lead you guys, and he wants to join the Local 810.

Q Okay.

A Never sign up with our local union.

Q What did you sao to him?

A Well, I said "See what's happening? We are going to take him to court, whatever the union is going to do."

Q Did he mention anything else that you can remember?

A He said that he will never sign up with 455.

MR. BLYER: Thank you very much, Mr. Farkas. I have nothing further.

JUDGE FRIEDMAN: Mr. Harper, do you have any questions?

MS HARPER: No. I'm sorry.

MR. BLYER: Your Honor, may the record reflect that I have given statements to respective counsel that Mr. Farkas had provided?

JUDGE FRIEDMAN: All right.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Farkas, is it true that Mr. Romanelli never asked you to sign a card or a petition for the Teamsters?

A He said to me, "I should go down there and sign up.

Q He asked you to sign for the Teamsters?

A Yes.

Q Mr. Farkas, I show you a document that Mr. Blyer has handed to me.

I ask you can you identify this document?

(Handing.)

A Yes. This was I testified.

Q Is that your signature on--

A Yes.

Q Would you look and see if your signature is on each and every page?

A This is my signature; yes.

Q Turn the page.

A That's my signature.

Q Look at the last page.

A Right.

Q Your signature is on the last page?

A Yes.

Q Do you recall when you signed this document, sir, approximately?

A I don't remember the date.

MR. ISRAEL: If your Honor, please, it is undated, that's why I asked the question.

Mr. Blyer, perhaps you can help us if this is a

Board statement?

MR. BLYER: No. I cannot help you with the date. First--number of reasons, one, this case was transferred from the Manhattan Region.

Two, what appears to have happened is that--that he was interviewed by someone from the Board who then provided him with a Xerox copy.

He then brought it home and read it, signed it, and sent it in; something like that; is that correct?

THE WITHESS: Right.

MR. BLYER: That's why I suppose it is not dated or--

MR. ISRAEL: May we have this marked for identification, please?

(Thereupon, the document referred to marked Respondent-Associated Exhibit 10 for identification.)

Q Mr. Farkas, was the original piece of paper on which this photostat was made, is that in your handwriting? Did you write this out?

A No.

Q Who wrote this out?

A This was somebody from the Government.

Q From the Natinnal Labor Relations Board?

A Yes.

Q I see.

Now, page 4 contains--which has your signature on it, contains the following statement, Romanelli never asked me to sign a card for the Teamsters."

A No. He never asked me to sign the card. He sent me down there to sign up with them. He didn't give me a card to sign for them.

Q What did you mean when you said Romanelli never asked me to sign a card for the Teamsters?

What did that mean?

A He did not give me a card from the Teamsters and said to me, "Sign this card."

Q You meant to say Romanelli never gave you a card?

A He never gave me a card. He only showed me a stipulation. He said to me "Thisis what they offering, this is what you are going to get if you sign up with them.

Q Now, you testified that Mr. Romanelli showed you a piece of paper which you described as a stipulation.

A Right.

Q In the summer of 1975.

Do you recall when in the summer of 1975 he showed you this piece of paper?

A When we were on strike in July.

Q In July?

A Right.

Q All right.

A Then he showed me again when I went on the second time, he showed me the same paper.

Q The second time was when?

A Whenever Allied signed up, the second time I spoke with him.

Q Now, you say in the statement that in--July of 1975, you got a letter from Mr. Romanelli asking you to return to work?

A Right.

Q Do you still have that letter?

A Yes. I have it home. You don't have it here.

Q You don't have it with you today?

A Right.

Q Do you recall what letter -- what the letter said?

A Beg your pardon?

Q Do you recall what the letter said?

A It says if I don't come back to work then I will lose my rights, my seniority and he's going to get somebody else to work.

Q And did you answer that letter?

A No, sir.

Q Now the first time you got a piece of paper from Mr. Romanelli was in the summer of 1975?

A Yes. In July.

Q Now, let me read you from page 2 of your statement. Sometime in the summer while I was on the picket line, I asked why he wouldn't sign a contract with Local 455. He said that he was going to get a Teamsters local.

Now, there is no mention of any piece of paper in the summer of '75.

Did you tell the Board agent who prepared this about this piece of paper--

A They did not ask me and I was not volunteering to tell him that.

Q He did not ask you the question of what you got?

A No,no.

Q I see. Now, this piece of paper mentions that you were shown something on Teamsters local stationery after the Allied had signed with 455; that would be in January; is that right?

A Right, right.

Q Well, now, did you volunteer that piece of information about that piece of paper?

A Well, what you mean did I volunteer?

Q This document that you signed mentions that you were shown a piece of paper in January?

A Right.

Q But not in the summer. How did you--that you were shown a piece of paper in January?

A Because I told him.

Q Why didn't you mention the fact that you received some paper in the summer, too?

A Maybe I did but I forgot. March they did not put it on the paper.

Q Did you read this paper before you signed it?

A Yes.

Q Was it a true statement when you gave this?

A Yes.

Q Incidentally when Mr. Romanelli told you that he would not sign with 455, did he tell you why he would not sign with 455?

A Well, he said he cannot afford it, and he is--I did not believe in that because he always cried, the time I was working, always said he is losing money, he is losing money in themeantime he is building up and building up.

So I did not even take it serious.

Q You did not believe that statement he was losing money?

A No, sir.

Q Did he tell you he owed the union funds $11,000?

A He told me twelve thousand.

Q Did you believe that?

A No, I did not.

Q Did you--

A I did not believe him anything.

Q No matter what he says you did not believe him. Did he tell you the sheriff was coming in to confiscate his machinery?

A No.

Q But he did tell you he owed the union two thousand dollars?

A Right.

Q You did not believe it?

A No.

Q Do you believeit today?

A I still don't believe it. I got to find out--

Q Is there anything Mr. Romanelli would tell you that you would believe?

A No, sir; nothing.

MR. ISRAEL: Do you have any questions?

MR. ZISKIN: Yes.

Q (By Mr. Ziskin) Mr. Farkas, you indicated that you read this affidavit, which is Respondents' Exhibit 9, befre you signed it; is that right?

A Yes.

Q And it was correct to the best of your knowledge when yousigned it?

A Yes.

Q And you read it carefully; right?

A I tell you the truth, it is very hard to read that statement.

Q But you read it?

A Yes.

Q Now, a number of times in this affidavit you mention the Teamsters; right?

A Yes.

Q But at no time do you mention the local number; is that right?

A The Teamsters, I thought that's the same thing. I'm not familiar with all the Teamsters, what kind of local it is.

Q And isn't it a fact that you indicated in your affidavit, I show you on page 3, I don't remember-which number of the Teamsters local was, isn't that what you told the man who took this affidavit?

A Right.

Q And when you gave this affidavit, you did not know which local Mr. Romanelli was talking about, did you?

A He did not give you a number of the local?

A He showed me the paper but I did not pay attention.

Q But he did not tell you what local by number that he was going to sign, did he?

A He did tell me 810.

Q How come you indicated that--

A Maybe I forget to put that down.

Q When did you remember-- Well, you said here, "I don't remember what number the Teamsters local was."

Now, I don't think that you could tell us now that you did not remember the number--

A No. I know more about it. So I know--

Q Well, when did you find out that it was Local 810 that Mr. Romanelli was talking about, because in your affidavit here you say you don't know the number of the local.

A The second time in January.

Q Well, this affidavit mentions your conversation with Mr. Romanelli on January 6, but in the affidavit it still says you don't know what teamster local he was referring to.

Look at the affidavit if you want and read it.

A I told you I did not pay attention what local it is. But after that when I saw that paper, I knew it was 810.

Q But in your affidavit, which refers to the paper, you state her, "I did not know which number of the Teamster local was."

A I said that. I did not [illegible] the number of the 810.

Q New, did Mr. Romanelli specifically tell you it was Local 810?

A Yes.

Q Or did he tell you Local 819?

A 810.

Q You are positive?

A Positive.

Q How do you know that?

A Because I found out the second time.

Q When the second time?

A In January.

Q When in January?

A I don't recall.

Q Look at your affidavit. You can use that to refresh your recollection. I suggest--

A Sometime in January.

Q I suggest that you start with the top of the page. Let me help you a little more. If you like, of course, you can read the whole affidavit. I'm sure no one will have any objection. I wouldn't want to take it outof context. Why don't you do that?

MR. BLYER: Why don't you just show him instead of wasting the time?

MR. ZISKIN: That's a point in the affidavit, right in the middle where he talks about Teamster local--so--

THE WITNESS: It does not say here January.

Q You keep reading.

A Yes. January the 6th, 1976.

Q Okay. Right. Now, when you gave this affidavit then you had already had this conversation with Mr. Romanelli on January 6?

A I had conversatinn--

Q No. You testified to a conversation you had with Mr. Romanelli on January 6, 1976; right?

A Right.

Q And you say now that in that conversation he told you which local was involved; is that right?

A Right. The address was this and I know where they are.

Q When you gave this affidavit, you told the Board Agent that you did not remember the number the Teamster local was; isn't that right?

A Yes, right.

Q Now how do you explain the fact that you did not remember what the number of the Teamster local was when you gave this affidavit if as you say Mr.Romanelli had shown you a paper with the number of the local on it?

A He showed me in January, he showed me the paper and I as reading it.

Q That;s right.

That's in your affidavit here.

Now, obviously you gave this affidavit after you saw Mr. Romanelli in January; is thatright?

A No. He showed me the paper before that.

Q Before you--you signed this piece of paper after your conversation with Mr. Romanelli; right?

A Right.

Q And at that time, prior to signing this affidavit, you say Mr. Romanelli showed you a paper with the name of the Teamster local on it; right?

A Right.

Q When you gave this affidavit, you were unable to tell the Board Agent the number of the local even though you say that you saw the paper with the Teamster local number on it; is that right?

A $itht.

I may give him the local, maybe he did not put it down, and I did not read it so carefully.

Q So now you are telling us you believe it gave the Board Agent the local number; is that right?

A Right.

Q That you gave the Board Agent the number of the Teamster local?

A I don't remember. Maybe I did, maybe I didn't. I couldn't tell you that.

Q What can you be sure you told him?

A I sure know it's 810.

Q When did you become positive it was 810?

A He sent me down there--go over there, that's the address.

Q When did he send you down?

A Before-- When I came there.

Q The second--

A The second time; right.

Q Is that in this affidavit that he sent you down--

A I don't know.

Q You look at the affidavit, isthere anything about Mr. Romanelli sending you down to Local 810 in that affidavit?

A He told me. I did not put it down in the paper. He told me to go down ther. He gave me the address.

Q I see. I just don't understnad, though, how it is thar when you gave this affidavit you could not tell which Teamster local was involved. You do say here, "I don't remember wich the number of the Teamster local was;"is that right?

A Yes.

Q Is that what the affidavit says?

A I've been not so familiar with the Teamster local ndaI didn't even pay attention to them because I don't want to join them, so I didn't even care about that.

Q When did you learn that it was Local 810 that was involved?

Did Mr. Blyer tell you it was 810?

A Who's Mr..Blyer?

Q The gentleman right here.

A No. I know it is 810.

Q How did you know it was 810?

A I found out from Frank, from other people he sent down.

Q When did you find that out from him?

A All the time.

Q When did you first find out the number Local 810?

A I--810 I find that out the whole summer.

Q When for the first time during the strike did you hear Local 810?

A In July.

Q Who told you about Local 810 in July?

A A lot of people, a lot of fellow members.

Q Did Mr. Romanelli specifically mention Local 810?

A Yes.

Q You are positive?

A Positive.

Q How come you did not recall that when you gave this affidavit?

A Because I might forgot to put that down in the affidavit.

Q But you specifically said in the affidavit that you did not remember the number of the local?

MR. BLYER: Your Honor, haven't we exhausted this?

JUDGE FRIEDMAN: We have been going over and over this.

MR. ZISKIN: I have nothing further.

MR. ISRAEL: Your Honor, may I ask one or two more questions?

JUDGE FRIEDMAN: Surely.

MR. ISRAEL: Maybe one.

Q (By Mr. Israel) Mr. Farkas, I asked you before if we coul fix the date when you signed this.

Didn't you sign this approximately one week after you claimed Mr. Romanelli showed you that 810 paper in January?

A I oould not remember when it was. I did not pay attention what day it ewas--what date it was.

Q If it was only one week after Mr. Romanelli showed you the paper with 810 on it, would you have remembered that it said 810?

A Yes.

Q Would you please read the middle paragraph starting on page 2, staSting with the words "last week"?

(Handing.)

A Yes.

Q Would you read that out loud, Mr. Farkas, please, starting with "last week." Would you read that out loud, please.

A I can't read it. I can't read it so good.

Q You can't read it?

A "Last week I was"--

JUDGE FRIEDMAN: Is it the handwriting, Mr. Farkas?

THE WITNESS: What?

JUDGE FRIEDMAN: Is it the handwriting that bothers you?

THE WITNESS: Yes.

Q Mr. Farkas--

A It is very hard to read.

Q Is that your signature at the bottom of that page?

A Yes; right.

Q Did you read that piece of paper, that piece of paper, before you signed it?

Z He was reading it to me, together we were reading it, then I signed it.

Q Together you were reading it?

A Right.

Q Okay. May I read it to you again if you cannot read it?

A Yes.

Q Last week I visited Romanelli to find out whether he was going to sign a contract since Local 455 had just settled the contract with the Allied Association.

He said he wasn't going to sign. He said he was going to have a meeting with the Teamsters local. He showed me a letter they had sent me on their stationery.

A Right.

Q So it was one week before you signed this that you saw the letter; is that right?

A Right.

Q And you could not remember one week later the number of the local?

A No. I did not pay attention what the number of the local was.

MR. ISRAEL: No further questions.

REDIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Farkas, do you now know what local he was referring to?

A Right.

Q What local?

A 810.

Q And did he ever tell you that, Mr. Romanelli?

A Yes.

MR. BLYER: I have nothing further.

JUDGE FRIEDMAN: Anything further from anybody?

MR. ISRAEL: No, sir.

JUDGE FRIEDMAN: All right.

You are excused.

(Whereupon, the witness was excused.)

JUDGE FRIEDMAN: Face me and raise your

right hand.

Whereupon,

MORRIS WALDMAN,

being first duly sworn by Judge Friedman, testified as follows:

DIRECT EXAMINATION

JUDGE FRIEDMAN: Please be seated and give your full name and address to the reporter now.

THE WITNESS: My name is Morris Waldman.

Q (By Mr. Blyer) Mr. Waldman, did you use to work for Master Ironcraft?

A Yes.

Q And how long did you work there?

A Eight years.

Q And what did you do there?

A I was mechanic and a welder.

Q And are you a 455 member?

A 12 years.

Q Are you still one?

A Still.

Q Okay. Do you belong to any other union?

A No.

Q Did you go out on strike on July 1st, 1975?

A Yes.

Q At that time how many men were working in the shop?

A Before the strike?

Q Yes.

A 12.

Q And did they all go out on strike, too?

A Yes

Q Are you still out on strike?

A I am out of work. I'm out on strike.

Q What about the other 11 men, are they still out on strike?

A I don't know.

Q Okay. During the strike have you been down tothe shop?

A Yes. A couple of times.

Q When was the last time youwere there, approximately?

A Couple of months; two.

Q Two months ago?

A Yes.

Q Did you see any business being done?

A Yes.

Q What did you see?

A I saw material on the table, I met over there two guys.

Q Were these two guys who worked for the company before the strike or two new men?

A One worked before and one was a new man.

Q Okay.

Anytime while you were on the picket line did anyone from 810 come over to you while you were on the picket line?

MR. ZISKIN: Objection.

JUDGE FRIEDMAN: Did I hear an objection?

MR. ZISKIN: Yes. I withdrew it.

A No.

Q Now, in mid-February of 1974, do you remember going down to the shop in the middle of February?

A Yes.

Q On that occasion were you with anybody or were you alone?

A No. I was with the boss.

Q What's the boss' name?

A Morris Shiner.

Q S-h-i-n-e-r?

A Morrie Shiner.

Q Shiner. Okay. And did you speak with him?

A Yes.

Q Where did you speak with him?

A Downstairs in the shop.

Q Did anyone else hear your conversation?

A No.

Q All right.

What was your whole conversation with him?

A The whole conversation was for work, in--this was the conversation. I need job. I need my piece of bread.

Q What did he say?

A He said he not can take me. He belong to another union.

Q Yes.

Did he say anything about Local 455?

A He told me he dropped the Local 455.

Q And did he say because of that anything could happen?

MR. ZISKIN: I'm going to object, your Honor.

Counsel is leading the witness. I think he can try and--

JUDGE FRIEDMAN: Yes. Sustained.

MR. ZISKIN: This is replete in all of counsel's questions and I object to them.

Q Do you remember anything else that was said?

A No.

Q He said he dropped you from the union; is that what you testified to?

A Yes.

Q Did he say anything else?

A No. Because of this he not can take me any more to work.

Q Because of what?

A Because he belong to 810.

Q Thank you.

MR. BLYER: I have nothing further.

MR. ISRAEL: May we have the statement produced?

MR. BLYER: Your Honor, if I may have the record reflect that I'm handing a statement given by Mr. Waldman to this agency, three statements, doublespaced.

JUDGE FRIEDMAN: All right.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Waldman, the strike started on July 1, did it not?

A Sure.

Q Were you working on June 30?

A No.

Q You did not work the month--

A Laid me off before.

Q You were laid off March 21, weren't you?

A Right.

Q So you did not work in April and you did not work in May and you did not work in June; is that correct?

A No.

Q And you did nto work the last nine days in March?

A No.

JUDGE FRIEDMAN: Is that no, you did not work?

A No.

Q (By Mr. Israel) While you were laid off, you asked the company for leave of absence?

A While layoff, he told me he doesn't have any more material to work. The business is down.

Q This was all before the strike; is that right?

A A few weeks before the strike.

Q A few weeks beforε the strike?

A About a few months.

Q Now, when you were laid off, when you were not working between March 21 and June 30, didyou ask Mr. Shiner for leave of absence?

A Did I ask him leave of absence?

Q Do you know what leave of absence is?

A Yes.

Q What is a leave of absence?

A To take a couple of weeks to go for work.

Q Did you ask him for that?

A Yes.

Q Did you get a job?

A No.

Q Did you look for a job elsewhere?

A I look for a job.

Q Between March and July?

A Yes.

Q And you couldn't find a job?

A No.

Q Now, there were people on June 30 who were working in the plant, were there not?

A Yes.

Q You know Mr. Arriano, Anthony Arriano?

A The foreman?

Q Yes.

A Yes.

Q You know Mr. Getty Magan?

A Yes.

Q He was working?

A He was working.

Q You know Mr. Amege Inregeameco?

A Yes.

Q He was working?

A He was working.

Q You know Mr. Gangemi, Vincent Gamgemi?

A Yes.

Q He was working?

A No.

Q Was not working?

A No.

Q Are you sure?

A Yes.

Q You say he was not working?

A No.

Q Was Mr. Scott working?

A I don't know. I'm not sure.

Q Was Mr. Graffa working?

A Who's--

Q Ben Graffa--

A Ben Graffa? No.

Q And you were not working?

A Yes.

Q So that there were at least three and maybe four people who were not working just before the strike started?

A Right.

Q And they were all laid off because there was no work?

A That's what he told me. I don't know. I'm not the best. I'm not in the business. I was out from the business.

Q When you went back I think you said a couple of months ago and asked Mr. Shiner for a job, did you see how many people were working at that time?

A Yes, I saw.

Q How many?

A Two was inside and one was outside. This was working outside I did not saw him. This was inside, I talk with them, they say these two--

Q I'm sorry. You saw the two outside guys?

A No. This was inside but the people what I talk with them, they told me here in the shop foreman, two is inside and two is outside.

Q So there were four people working when you went back a couple of moths ago?

A Yes.

Q Now, in March--when you got laid off or just before you got laid off how many people all together were working in the plant?

A All together was seven or eight.

Q And so a number of people were laid off before the strike?

A Right.

Q And the boss told you there was no work for them?

A No work.

Q And there's only four, at best you know, who are working now?

A Right.

Q Now, would you tell us again what was said when you went back to see Mr. Shiner a few months ago?

A. I met Mr. Shiner, he took me downstairs in the shop and showed me, he cleanup everything on floor. Now the table I saw material. He said this material I have time with this material. The order is maybe for two or three months later. I talk over there after this, people--

JUDGE FRIEDMAN: Mr. Waldman, try to speak a little more slowly.

This man here has to take down all you say.

Would you try to do that, please?

Would you repeat the question?

(Record read by reporter.)

A When I went back, I met Mr. Shiner in Mr. Shiner's took me in the shop and he show me he doesn't have work for nobody.

On the tables I saw a lot of material and when I talk with people to my friends and the friends--when I talked with my friends on the telephone my friends told me he have a lot of work.

Q Was that the whole conversation, Mr. Waldamn?

A Yes. I told him please take me back to work. I need -- on the table, I told him, I need bed. I have to support a family. I have to pay bills. He says "I belong to another union, and you don't have with me any more business.

Q And he also todl you he did not have work?

A Yes.

Q You say you spoke to friends--

A I spoke to friends and the friends told me he has a lot of work.

Q The friends were the other employees?

A Yes.

Q They told you he has a lot of work?

A Yes.

Q Did they tell you how many people were working?

A No; I don't ask.

Q You did not ask how many people were working?

A No.

Q Did you ever find out if there were more than four people who were working?

A I find out myself. I passed by over there.

Q Yes?

A I saw people were working in the shop. The door from the shop was closed. I sayd how many people was over there I didn't knowl

Q You don't know?

A No.

Q So it could be the four?

A It can be.

MR. ISRAEL: I have no more questions.

MR. ZISKIN: I have no further questions.

JUDGE FRIEDMAN: Pardon me.

Q (By Mr. Israel) Were you on the picket line during the summer?

A No.

Q Never on the picket line?

A No.

Q Were you on the picket line this year; say, starting in January?

A No. I never was.

Q How often have you been at Shiner's place of business since the strike started?

A Maybe six or seven times.

Q What were you doing there the six or seven times if you were not on the picket line?

A What I do over there in the shop?

Q What were you doing there if you were not picketing?

A I come to see, maybe they take me back to work, maybe the strike stop.

Q And the six or seven times, when were they? Were they last year or this year?

A This was last year and this year.

Q And how long would you stay there when you would go there?

A Fifteen; twenty times.

Q And then you would leave?

A Right.

Q Were there pickets at Mr. Shiner's place when you would go there?

A One time I met--I don't know--I don't know if the people was 455 or from another shop. I don't talk to these people.

MR. ISRAEL: No further questions.

MR. ZISKIN: I have no questions, your Honor.

JUDGE FRIEDMAN: All right.

Any questions? Any redirect?

MR. BLYER: Nothing, your Honor.

JUDGE FRIEDMAN: All right. Thank you very much, Mr. Waldman, you are excused.

(Whereupon, the witness was excused.)

JUDGE FRIEDMAN: Face me and raise your right hand, please.

This is an interpreter.

MR. BLYER: Yes; Italian.

(Whereupon, the Interpreter was duly sworn by Judge Friedman to faithfully interpret the questions from English into Italian and the answers given by the witness from Italian into English.)

JUDGE FRIEDMAN: Would you tell him to raise his right hand? (Interpreter complies.)

Whereupon,

Umberto Durso

being first duly sworn, was examined and testified, as follows:

JUDGE FRIEDMAN: Be seated.

(To Interpreter) Give his full name and address to the reporter.

THE WITNESS: (Through the Interpreter) Umberto Durso.

DIRECT EXAMINATION

Q (By Mr. Blyer) (Theoufh rhw Interpreter) Mr. Durso, who do you work for?

A (Through the Interpreter) I work for Koenig Iron Works.

Q Are you working there now?

A Yes.

Q How long have you been working there?

A Aomost four years.

Q And what is your job there?

A Mechanic.

Q You remember one day in the first week of January, about Januar 7, receiving a phone call from your boss Sol Leistner?

A Yes. I received a telephone call, but it was not the boss, he was the foreman and the shop steward.

Q What's his name?

A Vansie and tghe other one was called--

Q Vincent and--

A Arnold.

Q And arnold?

A Yes.

Q What did he tell you to do?

MR. ZISKIN: I'm going to object. I would request that counsel--I'm not sure--

MR. BLYER: It is not being offered for the truth of the matter--

MR. ZISKIN: I'd like to know who these people are.. If he could identify for the record with the witness--I know it is difficult, but I think you ought to make an effort to try and determine who these people are, what their positions are, if any.

MR. BLYER: I'll be glad to.

Q (By Mr. Blyer) Who is Vincent?

A He's the foreman of the shop.

Q Is he the man who called you?

A Yes. He was the person call me on the telephone.

Q And what did he tell you?

A He told me that everybody else had already sign, a paper, and he asked me what I wanted to do, if I wanted to sign also. And I said no.

Q Did he tell you to come down to the shop?

A Yes. He told me to come down to the shop and take a look and find out whether I could enjoy the--I could join the new member--membership in the new union and I said No.

Q Didn't you come down to the shop and speak to your boss, Sol Leistner?

A No. I didn't see the boss; no, I did not.

Q Can you read English, Mr. Durso?

A No.

Q Not at all?

A No.

Q Do you remember in the beginning of January going down to Local 455?

A Yes, in the evening. On the late afternoon.

Q And do you remember speaking to someone there?

A Yes.

Q Now, didn't you tell him that it was your boss that spoke to you?

MR. ZISKIN: Objection.

JUDGE FRIEDMAN: Sustained.

MR. ZISKIN: Move to strike any answer.

JUDGE FRIEDMAN: Yes. I'll strike it.

Q Do you remember giving a written statement to someone t the union?

A I was so upsetthat I don't know what I was doing. I was upset because of the fact that we had to change the union.

MR. ZISKIN: I'm going to move to strike that, your Honor. It is his--that's not testimony what his state of mind was, your Honor. I think that is irrelevant to this proceeding what his state of mind was. It is not testimony, your Honor. That is no way to cross-examine--there's no way to cross examine it.

JUDGE FRIEDMAN: All right.

Sustained. Granted.

Q (By Mr. Blyer) Did you give a statement to the union official? Yes or no.

A I sign with the union the following day.

Q I'm not asking you that.

I am asking you yes or not: did you tell the union official something and did he write it down? Yes or no.

A Yes. I left a statement. I'm going to ask him to say it again.

MR. BLYER: I tell you the truth, he has answered my question.

With your:Honor's permission, can you instruct the witness just to answer the question, listen carefully and answer the question and that is all?

JUDGE FRIEDMAN: Yes. Will you please give the witness that instruction?

MR. BLYER: Thank you.

(The Interpreter complied with the judge's directinn to him to so state to the witness.)

Q (By Mr. Blyer) Now, when you gave the union official a statement, did he read it back to you? Did he read it back to you?

A Yes. He read the statement back to me, but I was so nervous and upset that I wanted to leave. I wanted to go.

Q Did you sign that statement before you left?

A Yes. I signed.

Q Now, I ask you again, wasn't it the boss who called you on the telephone and who asked you to come down to the shop and spoke to you the next morning?

MR. ZISKIN: Objection, your Honor, he is impeaching his own witness.

MR. BLYER: Call it what you may.

MR. ZISKIN: It is hardly the way one refreshes his recollection.

JUDGE FRIEDMAN: I am going to take it because of the difficult circumstances under which we are getting this testimony.

MR. ZISKIN: Your Honor, I don't think that is quite appropriate because the circumstances are difficult does not justify the fact that we should deviate from appropriate procedure.

I appreciate the fact that there is a problem, but I don't think we should deviate from procedure just because there is a problem. I think this is inappropriate. I understand counsel is having a problem, and I sympathize with him, as an attorney, but I don't sympathize with him when I have a client to represent, and I don't think this is a proper way to proceed.

He knows he has to refresh a witness' recollection in a proper way. This is nto the proper way to do it.

If he has got something to show a witness, that is fine. The witness, to my recollection, says he can't read so I don't believe this document is worth anything from the mouth of this witness.

The witness has said he cannot read English and I am going to assume whatever counsel has in his hand is written in English, so I can't imagine what value this could be.

JUDGE FRIEDMAN: I've mzde my ruling. Go ahead. You have got your exception.

MR. ZISKIN: Thank you.

MR. BLYER: I forgot the question now.

JUDGE FRIEDMAN: However, I want to caution counsel for the General Counsel, if you can do this some other way, , and there are other ways--

(Record read by reporter.)

JUDGE FRIEDMAN: I think I am going to object to that one on the basis that he has already stated that it was the foreman who called him.

MR. ZISKIN: He has also previously testified that he did not speak to the boss.

Q (By Mr. Blyer) Did you speak to the boss when you got down to the shop in early January of 1976?

MR. ISRAEL: He has already answered that question, your Honor.

MR. BLYER: That's a separate question.

JUDGE FRIEDMAN: I'll permit that. Go ahead Counsel.

A No.

MR. BLYER: I have nothing further, your Honor.

MR. ZISKIN: Your Honor, I move to strike this testimony as irrelevant. There is no foundation for the testimony, it does not bear on any of the allegations in the complaint and I move that his testimony be stricken in its entirety.

JUDGE FRIEDMAN: Denied.

CROSS EXAMINATION

Q (By Mr. Israel) I have just one or two questions, Mr. Durso.

You say you received a call from Vincent?

A Yes. I received a telephone call from the foreman in the shop and they told me to go to the shop.

Q Is that Mr. Marano?

A Yes. The second name is Marano.

Q And Mr. Marano had been a member Of 455 like you; is that right?

A Yes.

Q And didn't you say you received a call aleo from the shop steward?

A No. It was the foreman. It was one--somebody in the s hop, the foreman.

Q Did you say you spoke to Arnold also?

A Yes. Arnold was also there.

Q Is that Arnold Perossi?

A I think so.

Q And Mr. Perossi was a worker in ghe shop like you, was he not?

A Yes. He was-- Yes. At that time he was working there in the shop.

Now I don't think he is working there any longer.

Q Did Mr. Perossi work there before the strike?

A Yes. He was working there the past year.

Q And Mr. Perisso was a member of a 455 like you were; is that not right?

A Yes.

MR. ISRAEL: No further questions.

MR. ZISKIN: I have no questions, your Honor.

JUDGE FRIEDMAN: All right. Any redirect?

MR. BLYER: Nothing.

JUDGE FRIEDMAN: All right.

Tell him he may step down and we thank him very much.

(Whereupon, the witness was excused.)

JUDGE FRIEDMAN: Tell him to step up and face me. Tell him to remain standing.

Face me and raise your right hand.

Whereupon,

MICHAEL DYNIA

being first duly sworn by Judge Friedman, testified on his oath as follows:

(Whereupon, the Interpreter was duly sworn to faithfully and truly interpret the questions propounded to the witness, Michael Dynia, in Ukrainian and the answers given bythe saic witness from Ukrainian into English.)

JUDGE FRIEDMAN: Would you have him give his full name and address to the reporter?

THE WITNES:S (Through the Interpreter) Michael Dynia.

JUDGE FRIEDMAN: All right.

His address?

THE WITNESS: 323 Hickory Street, sir.

DIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Dynia--

A -- [illegible], [illegible].

A -- Teaneck, New Jersey.

Q Are you now wprking, sir?

A Yes.

Q Before July--

JUDGE FRIEDMAN: Now, look--either we are going to go through an interpreter or not.

MR. BLYER: I have requested an interpreter because I think it will be faster and easier, your Honor.

JUDGE FRIEDMAN: Will you instruct Mr. Dynia to the effect that he should not answer questions even if he understands it, and you will interpret the question for him?

Thank you.

Q Are you now working, Mr. Dynia?

A Yes.

Q Before July 1st of 1975, did you have a job?

A I worked in Roma.

Q Worked where?

A Roma.

Q And what was your job at Roma?

A Mechanic.

Q How long had you worked there?

A Two years.

Q Are you a 455 member now?

A Yes.

Q How long have you been a 455 member?

A He says approximately 24 years.

Q And do you belong to any other union?

A No.

Q Did you go out on strike on July 1st of 1975?

A Yes.

Q Are you still out on strike?

A Yes.

Q Now, sometime in November of 1975, do you remember getting a phone callat your home from Mr. Romanelli?

A Yes.

Q What did he say to you and what did you say to him?

A He asked me if I would like to belong to another union, if whether I would like to sign the card to join another union in order to work for me.

Q Do you remember anything else he told you on the phone?

A He only told me to come to the shop where he is going to pick me up along with his other men and take me to the shop--to the union shop--where I'll talk to the delegates.

Q Did you go down to the shop?

A Yes.

Q

Ane what happened when you got to the shop?

A I came to the shop and he took us in his car, and then he brought us to this other place. I do not remember, it was fifteen or sixteen street.

Q In what borough?

THE INTERPRETER: Your Honor, the witness does not understand what borough. There is no Ukrainian word for--

MR. BLYER: Let me change the question.

Q Where in the city?

A In New York, downtown New York.

Q And what office was that?

A I don't remember exactly what it was. It was s huge hall. It was a union, but I cannot describe it more accurately.

Q Do you know what union it was?

A 19 or ten eight--810 or 910. I don't remember.

Q Okay.

What happened when you got there?

A When we got there there was a delegate waiting for us. He told us about the--he told us--

MR. ZISKIN: Your Honor, I think we ought to try and ascertain who he spoke to before we go into testimony. Otherwise we are going to have the same problem that we had before.

JUDGE FRIEDMAN: I realize--I think the [illegible] objection is proper.

Q First of all, were you with anyone else when you got there?

A Romanelli, the boss, and Bob, who works as a mechanic.

Q Okay.

Now, I'm not sure you told us, how was it that you all got there?

A Our boss asked us to come, and he took us there himself.

Q All right. Did he take you by automobile?

A Yes.

Q Okay. Now, when you got there, was someone introduced to you who you never met before?

A That delegate whom you never met before.

Q Was the name of the man givento you?

A I don't remember.

Q How was he introduced to you? What was said?

A Only that he was a delegate from that union.

Q Okay.

Now where did you go once you were in the hall?

A I--

THE INTERPRETER: May I interpret the question? I think the question is a little bit sophisticated for the witness.

A When we arrived there the delegate was not in

A

the immediate area at the time and the boss asked us to wait until -- wait in the hall for the delegate to come.

Q Eventually where did you go?

A We waited to the delegate came, and then he invited us inside the hall.

Q Okay.

You sat in a room?

A Yes.

Q And who sat there? Who was there?

A Was it before the delegate came?

Q After the delegate came?

A We invited into the hall.

Q Okay. And who was invited into the hall?

A Bob and boss.

Q And what happened once you got inside to the hall?

MR. ZISKIN: Objection. I object to the form of the questinn, your Honor. He is going to start to elicit an answer that appears may not be connected up to a specific individual.

MR. BLYER: Your Honor, the witness has done the best he could. He testified to a delegate who introduced him as such in the office of Local 810. I think with that background it is sufficient to permit this witness to testify to what was told to him.

It does not put any difficult burden on the party to the contract. He will have an opportunity to cross examine. He can speak to his clients. I think it certainly can be inferred now that he spoke to an 810 official.

True, he may not know his name but he is in 810's office, he has been introduced to an individual after being told he is going down to speak to an 810 official.

I mean, what else do you need?

JUDGE FRIEDMAN: You need a lot more.

MS. HARPER: The question was, however, what happened.

I suppose-- The next question probably--it may be objectionable because -- but that one is not.

JUDGE FRIEDMAN: What happened certainly is not objectionable but I think that what--the point Mr. Ziskin is making certainly has some validity.

All right. You can permit him to ask this--

MR. BLYER: I am getting at what was said, of course.

JUDGE FRIEDMAN: I know. And that is why I say that Mr. Ziskin's objection I think has--it is true he was introduced to a delegate. That's what he has testified to.

MR. BLYER: That's right.

JUDGE FRIEDMAN: And it was true he was in the union hall. But it seems to me that I cannot infer from that that it was a union--a person who was qualfiied or it was a gentleman or was a representative of the union to that extent.

I realize the difficulty you are working under, and I understand your problem, but if I take it, let's assume for het moment I take it, I cannot make a finding on it.

MR. BLYER: I would like you to take it and perhaps we can find some case law to support, otherwise it makes it quite easy for an employer to do this over and over again, I mean, it is not so difficult not to describe who you are.

JUDGE FRIEDMAN: Otherwise it makes it quite easy for General Counsel, the charging party, to prove a case without identifying who the charge is to. It works both ways.

I am not trying to argue with you, sir. What I am trying to say is that I don't know what value the testimony will have.

I will take it for whatever value it has. I will permit it, but I can tell you now that I don't know how much weight or if I can give it any weight at all.

MR. BLYER: If I can, I will find some case law that will support our point.

MR. ZISKIN: I know you have given me automatic exception to your ruling. I want to strenuously object to this.

JUDGE FRIEDMAN: Your st4enuous objection is noted, sir, and you have a specific exception. If it is reversible rror, it is there.

Q (By Mr. Blyer) Mr. Dynia, will you tell us what was asid to you by the individal you described as a delegate?

A He told us that it would be to our advantage to sign with this--with his union because the union that represents them now will be on strike indefinitely.

JUDGE FRIEDMAN: Who is "he"?

MR. BLYER: I am sorry?

JUDGE FRIEDMAN: Who is "he"?

THE INTERPRETER: Your Honor, the question was--

Q Who is talking now?

JUDGE FRIEDMAN: Who told him that?

THE WITNESS: The delegate.

Q And during the course of this meeting or conversation were there any questinns asked of the delegate?

A Only questions were asked about what type of benefits we will get, and I don't remember who was asking the questions, but someone asked what type of benefits we will have and what money we will redeive.

Q Was there -- Was Mr. Romanelli present during this meeting?

A

A He was present.

Q Did he ask any questions as you can recall?

A Nothing.

Q Now, the man who you described as a deletate, did he elt you his name?

A No. We did not ask and he did not say.

MR. BLYER: Thank you, your Honor. I have nothing further.

JUDGE FRIEDMAN: I'd like to ask a question.

Can you describe the man?

THE WITNESS: Middle-age, 45, 50, five feet eight inches, approximately. He had sort of reddish blond hair. That's all I can remember.

JUDGE FRIEDMAN: Okay.

MR. ISRAEL: Is there a statement, Mr. Blyer?

MR. BLYER: Yes, your Hnnor. May the record reflect I am giving counsel a th ree-page statement by Mr. Dynia.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Dynia, after this meeting at this union, is it a fact that Mr. Romanelli never called you again about this matter?

A Not pertaining to this matter.

MR. ISRAEL: Would you read back the question, please?

THE WITNESS: He call him but not pertaining to this matter.

Q Okay. Fine.

Did Mr. Romanelli ever threaten you with the loss of your job if you would not sign with the union?

A I don't remember. I don't think so.

Q Did Mr. Romanelli ever try to force you to join any other union?

A No.

Q Did Mr. Romanelli ever say to you that he would have to close the shop if he stayed with Local 455?

A Yes, that he said.

Q When did Mr. Romanelli say that?

A It was while he was still working.

Q I see.

MR. ISRAEL: Would you mark this document Respondent's, I think it is 11, I think.

JUDGE FRIEDMAN: Right.

(Thereupon the documet referred to marked Respondent-Association Exhibit 11 for identification.)

Q (By Mr. Isreel) Mr. Dynia, I show you this exhibit, Respondent's No. 11, and I will ask you if you can identify the signature on the last two pages.

(handing.)

A THE INTERPRETER: He recognizes his signature.

Q Did you sign those two pages?

A Yes.

Q Was that statement read to you before you signed it?

A My daughter read it to me.

Q Did she translate it for you?

A She translated it a little bit, but maybe I did not understand everything.

THE INTERPRETER: He says.

Q As this statement was translated to you by your daughter, did you believe it to be a true statement?

A Well, my daughter read, so I had to believe.

Q Would you read to Mr. Dynia the last paragraph in English of this statement and then translate it to him, please, English, and then translate it?

THE INTERPRETER: I am afraid I cannot read this handwriting.

MR. ISRAEL: May I read it to you and then you translate it?

"Romanelli never said he wuuld have to close the shop if we stayed with Local 455 to me."

THE INTERPRETER: He said before while we were working that he cannot afford any more of this union, and that he will have to close.

Q Mr. Dynia, did your daughter translate this statement on this piece of paper to you, "Romanelli never said he would have to close the shop if we stayed with Local

455 to me"?

A I don't remember her reading that, but it is possible that I forgot.

Q Is it possible she translated that to you?

A Maybe, but I cannot guarantee it.

Q And when you signed this, you believed this to be a true statement?

A I sign it because I believe what my daughter read was true statement.

Q I see.

Now, Mr. Dynia, did you ever tell Mr. Romanelli that if you signed a card for another union you felt you would be injured by 455, physically injured?

A I don't th ink so. I don't remember.

Q Did you ever make that statement to anyone?

MR. BLYER: Your Honor, I would object to the question on the grounds that it calls for the man's feelings, and I don't think that has any relevancy here.

MR. ISRAEL: I am not asking his feelings, I am asking a statement.

JUDGE FRIEDMAN: Would you read the question back, please?

(Record read by reporter.)

JUDGE FRIEDMAN: Overruled.

A Yes. I remember that there were such talk among friends. That there would be such a possibility.

Q Who did you make that statement to?

MR. BLYER: Objection, your Honor, to the relevance.

I don't know what relevance it has to this case.

JUDGE FRIEDMAN: Oh, I think it has relevance to what we know is going to ultimately be the defense. I don't know what value it has again, but I will permit it.

Overruled.

MR. ISRAEL: Would you read the question back, please?

(Record read by reporter.)

MR. BLYER: I have no problem if he is trying to establish that 455 did this and if he wants to ask the witness that, let him. He is asking what he felt and what he made a statement to this and that, that's what relevancy to - -

MR. ISRAEL: I did not--

JUDGE FRIEDMAN: He did not ask him what he felt.

MR. BLYER: The prior question--

MR. ISRAEL: No.

MR. BLYER: I think it did, but--

(Record read by reporter.)

A I don't remember the particulars. We were talking about it with friends, just a matter of conversation, and I don't remember to whom I said this.

Q And what did you say, Mr. Dynia?

MR. BLYER: Your Honor, I have to object. Again, if he wants to attribute it to 455, I'd like to see him do it, and I have no objection to him doing so.

But what does this conversation among friends have to do with it?

JUDGE FRIEDMAN: I can proceed with it and delve into whether in fact there was or were any threats from 455 by first knowing what he said.

MS. HARPER: Why don't we ask him whether he had any threats. That would be more direct, it seems to me.

MR. BLYER: I object.

The question calls for a hearsay statement. The conversation among friends.

JUDGE FRIEDMAN: When you say "statement," the witness is the one who made the statement.

MS. HARPER: Is not the proper question when Were you ever threatened, did anyone from 455 threaten you and with what were you threatened?

JUDGE FRIEDMAN: I will strike it if the next question is why did you make the statement and if he does not ask that question I'll strike it.

MR. ISRAEK: I will stipulate right now that that is my next question.

JUDGE FRIEDMAN: Go ahead. Proceed.

Q (By Mr. Israel) I think the question was, what did you state to your friends.

A It was such a long time ago, and I never attributed to any importance. We were joking about it,and said this jokingly, so I don't remember.

MR. ISRAEL: Never should have made the objection, Mr. Blyer.

JUDGE FRIEDMAN: That is it.

Q For the record, why did you make the statement, Mr. Dynia?

A Well, usually if friends came together, we were joking and I had to say something, and this is the thing that came to my mind. I thought it was funny at the time.

Q The only reason you made the statement is because you thought it would be a joke; is that right?

A Only because it was a joke.

JUDGE FRIEDMAN: Okay. I see. I have no further questions.

Q (By Mr. Ziskin) Mr. Dynia, you testified that you went down to Local 810 and you spoke to a delegate, and that the delegate told you certain things. Would you translate

that to the witness?

Now, did this person who was described to you as a delegate speak in English?

A Only in English.

Q All right.

Mr. Dynia, did you understand what he was saying to you?

A Probably not everything. But I understood enough.

Q Did anybody translate for you in Ukranian what this individual said to you?

A No.

MR. ZISKIN: Your Honor, I again move to strike the witness' testimony. I know that General Counsel has used a translater here but I am n ot at all convinced that there is--it was absolutely necessary to use a translater.

General Counsel admitted he was using the translater for convenience purposes. And this witness should not be afforded any additional leeway that any other witness who testifies in this proceeding is afforded.

He was not able to identify the person that he allegedly spoke to at Local 810 and I think that you should totally disregard his testimony because this witness by his own admission understands English and really although there appears to be some problem with translating through an interpreter, which we have all done--gone through, in Board proceedings, he still isn't entitled to any greater weight than any other witness.

JUDGE FRIEDMAN: I am not going to give him any greater weight than any other witness.

MR. ZISKIN: I would urge that you strike his testimony because there is no foundation for that testimony. And the mere fact that we have used an interpreter should not--

JUDGE FRIEDMAN: I am not-- I did not overrule your objection because of the use of an interpreter.

MR. ZISKIN: It certainly seems so, your Honor.

JUDGE FRIEDMAN: Whatever it seemed to you, that is up to you. I am not going to sit here and argue with you. I have made the ruling and it stands.

MR. BLYER: I would like to note, your Honor, that I had an interpreter for the convenience of the other parties, who during cross examination would probably have difficulty questioning this man.

During trial preparation in my own judgment that is what I saw and I just like to point that out to Mr. Ziskin.

JUDGE FRIEDMAN: Go ahead.

Are you all finished?

MR. ISRAEL: May I ask one or two more

questions.

Q (Bt Mr. Israel) Mr. Dynia, does Mr. Romanelli speak Ukrainian?

A No.

Q Did he ever use a translater when speaking to you, sir?

A I don't know. Do you mean I use the interpreter?

Q Did Mr. Romanelli ever use an interpreter to translate to you when he spoke to you?

A No.

Q Do you feel that you understood everything Mr. Romanelli said to you when he spoke to you in English?

A I spoke German and our foreman speak German and very often what Mr. Romanelli had to say to me, he said through the foreman, so sometimes I use the interpreter.

Q When Mr. Romanelli drove you in the car was the foreman there?

A No.

Q Was the foreman with you at this union place?

A No.

Q When Mr. Romanelli called him at night in November, did the foreman get on the phone and speak German?

A No.

Q hen he came down to the shop, was the foreman there to translate?

A No.

Q But there were times when Mr. Romanelli used the foreman to translate into German for you?

A He will explain the duties to the foreman and the foreman in turn would explain to me in German what I had to do.

Q Was that done because Mr. Dynia did not believe he fully understood the English Mr. Romanelli was using?

THE INTERPRETER: Your Honor, may I clarify this to--this statement more because he did not understand.

MR. ISRAEL: I'll withdraw the question.

JUDGE FRIEDMAN: I am going to say, that it is sometimes a little bit dangerous because we cannot understand what you are saying.

I appreciate your efforts. I really do.

Q Mr. Dynia, how often does Mr. Romanelli's English get translated into German for you. How often does that happen?

A Very seldom, because what would happen, the foreman would be instructed about the job and he would then instruct me in German.

Q I see. Does Mr. Romanelli speak with an Italian accent?

A That I wouldn't know.

MR. ISRAEL: No further questions.

MR. BLYER: I have nothing, your Honor.

JUDGE FRIEDMAN: All right.

He is excused.

(Whereupon, the witness was excused.)

JUDGE FRIEDMAN: Raise your right hand.

Whereupon,

Antonio Monturo

being first duly sworn by Judge Friedman, was examined and testified, through the Interpreter, as follows):

JUDGE FRIEDMAN: (Through the Interpreter) What is your name?

THE WITNESS: Antonio Monturo.

JUDGE FRIEDMAN: I think before you use the Interpreter, ask him if he speaks English, will you please?

MR. BLYER: I will be glad to try it. I think what you may find, though, and this is what I asked for an interpreter that cross examination is a real problem, but I think we can go over this in English and you may have to use him on cross.

But you want to start in English, it is fine with me.

JUDGE FRIEDMAN: Do you understand what I am saying to you now?

Do you understand the way-- What I am asking-- saying to you now?

THE WITNESS: I understand some words, I

not everything. Some words, I understand, some words I don't understand.

JUDGE FRIEDMAN: I think when we get to matters which possibly might be technical, perhaps you better use the interpreter.

Q (By Mr. Blyer) Mr. Monturo, did you use to work for Paxton Company?

A Yes.

Q Wait for the interpreter.

A Yes.

Q How long did you work there?

A Three years.

Q And what did you do there?

A Mechanic.

Q And are you a member of Local 455?

A Yes.

Q How long have you been a member?

A Seven years.

Q Did you go out on strike on July 1st, 1975?

A Yes.

Q And are you still out on strike?

A Yes. I have to ask the witness to repeat.

The strike is finished. And I have not worked for 455.

Q Let me ask it again.

Are you working now for Paxton?

A No.

Q Wait for the interpreter.

A No.

Q When you went out on strike on July 1st, how many men were working in the shop doing production work?

A Would you please--

Q When you went on strike on July 1st, how many men were working in the shop doing production work?

A Three.

Q What are the names of the other two men?

A Ari Palazzo. Hans Poehm.

Q Hans P-o-e-h-m. Did they go out on strike, too?

A Yes.

Q Are they still out on strike?

A Yes..

Q During the strike have you been down to the shop?

A Sometimes, not always, because I was looking for a job.

Q Okay.

When was the last time you were there? Approximately?

A I don't remember exactly, but approximately two months ago.

Q Now, when you were there at that time did you see if there was work in the shop?

MR. ZISKIN: Objection. As to relevancy. Your Honor, if you look at the complaint there are not any allegations about continuity of work or anything like that. And I know that this question has been asked of a number of other witnesses, but when you look at the complaint I don't see what relevancy it has to the complaint, frankly.

If we are going to continue to go through this with every witness I really must wonder why.

MR. BLYER: There is an allegation, your Honor, that these gentlemen, strikers that is, were denied reinstatement when they made an offer to return to work and I am just indicating that as of the present time there is work available.

That does not mean that--there is work for all those who have gone out on strike but I am pointing out that the shops are operating, and that there is work by these persons-

by these persons personal observations of what is going on in those shops.

It may be for the General Counsel's case all we have to show is that requests for reinstatement was made and the--an unconditional request was made and the employees were not returned to work. That might be sufficient t o carry the burden. But I thought this additional information would be helpful too in this regard.

MR. ZISKIN: Your Honor, I must also point out that there are certain allegations of the complaint which do make allegations about a denial of reinstatement but there is none with regard to Paxton.

Now that is th e nature of the General Counsel's complaint. I think we ought--he ought to stick to his complaint or move to amend it.

MR. ISRAEL: Paragraph 14A, and B deals with Paxton, and there is no allegation--

MR. BLYER: There must be another paragraph.

MR. ISRAEL: 14 is Paxton.

MR. BLYER: -- in a different regard.

JUDGE FRIEDMAN: I cnnot find it anywhere.

MR. BLYER: Here it is, 26, your Honor.

JUDGE FRIEDMAN: All right.

Paxton is one of the Respondents' 1.

MR. BLYER: Yes.

JUDGE FRIEDMAN: All right. I am satisfied. I do think, however, that whether there is work or not really is basically a question of backpay in the event that I find that this was an unfair labor practice strike.

If I find it is just an economic strike, it has no relevancy whatseover but of course I am not deciding that now. And the--I will really-- I really don't know whether you really have to go in to whether or not the shop was working or not.

I think it might save time if we leave thowe out.

MR. BLYER: All right.

Q (By Mr. Blyer) Now, in mid-january of 1976, Mr. Monturo, do you recall receiving a telephone call from Mr. Leo Mayer?

A Yes, I recall.

Q Who is Mr. Mayer?

A The boss.

Q And what did he say to you on the telephone only, just the telephone?

A He told me that he wanted to talk to me. However, he could not talk to me on the phone. He asked me to come down to hji shop in order to talk to him.

Q Did you do so?

A Yes, I did.

Q When in relation to the phone call?

A I don't recall precisely. It might be one day later.

Q When you got there, did you speak to Mr. Mayer?

A Yes, I did.

Q When you spoke to him, was anyone else there?

A Yes. There were other people, but they were not close to us--close enough so that they could hear the conversation.

Q Where was your conversation?

A In his office.

Q Now, what did he say to you and what did you say to him? Try to remember everything.

A He told me--he asked me if I wanted to go back to work. I told him yes, I am looking for a job.

Q Go on.

A He told me that--he told me to change the union. I told him that I don't want to change the union, I want to work, but I don't want to change the union.

Q And what did he say?

A I don't recall what he said. I said that if the strike would go on for a long time I may come back. If the strike would continue for a very long time I might come back. But it is not certain.

Q What did he say in response to that?

A He told me please th ink carefuloy because otherwise I may find anther person instead of you.

Q During this conversation did he, Mr. Mayer, mention which union he wanted to change to?

A Yes. He told me to change the union, and mentioned Local 810.

MR. BLYER: Thank you, Mr. Monturo.

I have nothing further. Thank you, your Honor.

JUDGE FRIEDMAN: All right.

Mrs. Harper, is there anything?

MS. HARPER: No.

MR. ISRAEL: You have a statement, Mr. Blyer?

MR. BLYER: Yes. An affidavit.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Monturo, is it true that Mr. Mayer never gave you any union card to sign?

A Would you please repeat the question?

Q Is it true that Mr. Mayer never gave Mr. Monturo a union card to sign?

A No.

JUDGE FRIEDMAN: You mean it is not true or it is true?

THE WITNESS: It is not true.

Q Did he ever give you a union card to sign, Mr. Mayer?

A No.

Q Did he ever ask you to go with him to any union?

A No.

Q Did he ever give you the name of the union he wanted you to join?

A Yes. 810.

MR. ISRAEL: Would you have this marked Respondents' 12, I believe.

(Thereupon, the document referred to marked Respondent-Association Exhibit 12 for identification.)

MR. ISRAEL: Would you ask Mr. Monturo if he can identify the signature on the last page of this statement?

(Handing.)

THE INTERPRETER: Yes, it is his signature.

Q Was that statement read to you in English before you signe it?

A I want to see what the statement is. Let me see it, please.

Q Certainly.

A (The witness asked the interpreter to read the statement.)

MR. ISRAEL: I have no objection. Translate the statement.

A Only reading. If there is anything I don't understand I am going to ask the interpreter.

Q I have no objection. But that is not my ruling to make.

JUDGE FRIEDMAN: I don't care. If you can read it.

A "I, Antonioo"--

JUDGE FRIEDMAN: The entire thing? Is there anything-- Isn't there a specific part?

JUDGE FRIEDMAN: Yes, there is.

Was this statement to which your signature is attached, to which you signed--did the statement which you signed, which was just shown to you, and which you identified, read to you in full before you signed it?

THE WITNESS: Yes. Yes, but I want to see the whole statement because there might be more than just one statement.

MR..ISRAEL: I wait your direction, your Honor.

BY MR. ISRAEL:

Q Let me approach this a different way.

When you signed this statement, did you believe it to be a true statement?

A Sure. Yes. But as long as I cannot read the statement I can not tell.

Please let me read the statement.

JUDGE FRIEDMAN: All right. Let him read the statement.

A "I, Anthony Monturo, being duly sworn, deposes and says. I am an employee of Paxton. I have been on strike since June 30, 1975.

"No. 2, I live at 2350 Beaumont, Bronx, New York.

"No. 3, in mid-January Leo Mayer called me on the telephone at home. He said that he wanted to talk to me about something. He said that he did not want to talk on the phone, and he asked me to come to the shop to speak with him."

JUDGE FRIEDMAN: Wait, just hold it right there. Just, it just occurs to me this is going into the record.

JUDGE FRIEDMAN: It should not be going into the record. Ask him-- There is one portion of this statement that the counsel for the respondent here is trying to get him to testify to.

I will permit the reading of that portion of counsel for the respondent will point it out to the interpreter.

MR. ISRAEL: I will do that, your Honor.

JUDGE FRIEDMAN: All right.

It has been explained that that portion of the statement is the page--is on the page on which the itness has signed.

THE WITNESS: Yes. I understand. And I read before I sign.

Q (By Mr. Israel) Would you read to him Paragraph 6, starting on page 2, please?

A Mayer did not give me a union card. He did not ask me to go with him to any union. He did not tell me the name of the union he wanted to join.

Q Just Paragraph 6. Now, Mr. Monturo, is it true as it states in that statement that Mr. Mayer did not give you the name of the union he wanted you to join?

A Mr. Mayer told me if I am going to work I am going to give you the number of the union, otherwise, no, I am not going to give you the number of the union.

MR. ISRAEL: Your Honor, I move to strike it as not responsive and I would have the question repeated.

JUDGE FRIEDMAN: All right.

I will strike it.

Would you please repeat the question, Mr. Reporter?

(Record read by reporter.)

MR. ISRAEL: Your Honor, may I address a qestion?

JUDGE FRIEDMAN: Yes.

Q (By Mr. Israel) Would you read him just the last sentence of Paragraph6, Mr. Interpreter?

A He did not ask me to go with him to any union. He did not tell me the name of the union he wanted to join.

JUDGE FRIEDMAN: All right.

Now, would you translate that, please?

Q (By Mr. Israel) Is that a true statement or not?

A This statement is true. However, another time in April he told me the name of the union, another time. It was April. After this statement.

Q After that statement he gave--Mr. Mayer gave him the name of the union?

A Yex. After this statement.

Q When was the last time you saw Mr. Mayer?

A In April, on the phone, he asked me whether I wanted to come back to the sh op, and he gave me the name of this union.

Q That was the first time Mr. Monturo had heard of this union; is that correct?

A Yes. That was the first time.

Q And between the time that Mr. Mayer spoke to him when he went to the shop and April there were no discussions with Mr. Mayer?

JUDGE FRIEDMAN: Was there anyone -- Was there any conversations with Mr. Mayer?

THE WITNESS: No, never.

Q Now, did you ever tell Mr. Mayer that you wanted to go back to work, but you would--you had been threatened by the Local 455 pickets outside the plant?

A No. I told Mr. Mayer that I wanted to work. I did not want troubles, and I myself was part of the pickets outside.

Q Were you ever threatened by the pickets outside the plant?

A No, never.

MR. ISRAEL: No further questions.

MR. ZISKIN: I have no questions, your Honor.

REDIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Monturo, in April when you spoke to Mr. Mayer, what did he say to you on the phone?

A Mr. Mayer told me for the last time, if I wanted to go back to work in his shop, that was the union, and he told me the name of the union.

Q And what did he say the name was?

A 810.

Q Now, did he say anything else to you?

A No. He did not say anything else. I told him to forget about the whole thing.

Q Did you ever speak to Mr. Mayer about 810 again?

A No, never.

MR. BLYER: Thank you, Mr. Monturo.

I have nothing further.

JUDGE FRIEDMAN: .. Anything further of this witness?

(No response.)

JUDGE FRIEDMAN: All right. Thank you.

(Witness excused.)

JUDGE FRIEDMAN: We will adjourn until 9:30 tomorrow morning.

(Whereupon, at 2:45 p.m., the hearing recessed, to reconvene June 9, 1976, at 9:30 o'clock a.m.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Region 29

- X

In the Matter of:

GREENPOINT ORNAMENTAL & STRUCTURAL
IRON WORKERS, INDEPENDENT ASSOCIATION
OF STEEL FABRICATORS, INC., et al.

-and-

LOCAL 455

-and-

LOCAL 810

-and-

INDEPENDENT ASSOCIATION OF STEEL
FABRICATORS,INC.; ACHILLES CONSTRUCTION 29-CA-4853
CO., INC.;GREENPOINT ORNAMENTAL AND
STRUCTURAL IRON WORKER, INC.; LEUSER IRON
WORKS INC.; IKENSON IRON WORKS, INC.;
KUNO STELL PRODUCTS CORP.; LONG ISLAND STEEL
PRODUCTS CO., INC., MASTER IRON CRAFT CORP.,
MELTO METAL PRODUCTS CO., INC.; MOHAWK
STELL FABRICATORS, INC.; THE PELLE COMPANY;
ROMAN IRON WORKS, INC.; SPIGNER AND SONS
STRUCTURAL STEEL CO., INC.; S. CHERVENKA AND
SONS, INC.

-and-

PAXTON METALCRAFT CORP., DIVISION OF
APEX INDUSTRIES, INC.; KOENIG IRON WORKS, 29-CA-4922
INC., TROJAN STEEL CORP.: G.ZAFFINO AND
SONS, INC.: ROMA IRON WORKS, INC.

-and-

GREENPOINT ORNAMENTAL AND STRUCTURAL
IRON WORKS, INC. 29-CA-4772

-and-

ROMA IRON WORKS, INC. 29-CA-4921

-and-

SHOPMEN'S LOCAL UNION NO.
455, INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORKERS,
AFL-CIO

-and-

STEEL, METALS, ALLOYS AND HARDWARE
FABRICATORS AND WAREHOUSEMEN, LOCAL
810, AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTER,CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

Party to the Contract

- x

16 Court Street
Brooklyn, New York
June 9, 1976

The above-entitled matter came on for hearing at 9:30 o'clock A.M.

BEFORE:

MORTON D. FRIEDMAN, Administrative Law Judge

APPEARANCES:

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PROCEEDINGS

JUDGE FRIEDMAN: On the record.

Whereupon,

WILLIAM COLAVITO

having been previously sworn, resumed the stand and testified further as follows:

JUDGE FRIEDM[illegible]ou understand you are still under oath?

THE WITNESS: Right.

JUDGE FRIEDMAN: All right.

Are we going to have any more interpreters today, Mr. Blyer?

MR. BLYER: No, not today.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Colavito, you testified yesterday that there came a time in August when you negotiated a separate contract with Dextra, is that correct?

A That's correct.

Q Aed prior to your separate negotiation with Dextra, you understood and accepted Dextra to be a member of the independent unit, is that correct?

A Yes.

Q When I say the independent, I mean the independent association unit.

A Yes.

Q Had you in June also accepted Atwater as being a member of the independent association unit?

A Yes.

Q Now, did there come a time when you negotiated and consummated a separate collective bargaining agreement with Atwater?

A Yes.

Q When was that?

A In the fall, October or early November, I think.

Q Would you tell us the circumstances under which you negotiated a separate agreement with Atwater?

A Well, the union, he sent a letter of recognition to the association explaining why he had to negotiate and wanted to negotiate a contract with the local union, and he sent us a copy of that letter, and he sat down with the local union and we accepted it.

We accepted his -- that he was not going to be bound by the association, to negotiate with us, not bound to be relieved and so forth, anywheres releived,, according to him, and we sat down and negotiated a contract with him and we did sign a contract.

Q When you say he sent a letter to the association, how do you know it?

A Well, we received a copy of it.

Q Are you stating that the copy you received indicated

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that the original had gone to the association?

A I don't remember.

We received a copy I think that he sent the association or may have gotten a letter on his own that he sent to the union too.

The exact letters I am not so sure.

Q Did you, prior to negotiating with the representative of Atwater confirm with Mr. Spigner whether Atwater had resigned to the association?

A Did we confirm, no.

I didn't.

Maybe someone else did.

I don't know.

Q Do you know if anyone in your local confirmed this matter with the association?

A No, I don't know.

Q Was there any correspondence with the association concerning Atwater's alleged resignation?

A I don't know of any.

Q As a result of this letter received from Atwater you negotiated separately with Atwater?

A Yes.

Q As a result of these negotiations you consummated an agreement?

A Yes.

Q Did you notify the association in writing that you had consummated an agreement with Atwater?

A Not that I know of.

I don't know of any letter that was sent to the association.

Q Incidentally, did you at anytime notify the association in writing that you had consummated an agreement with Dextra?

A I don't know of any letter.

I know they filed charges almost the day after.

Was an inactive thing.

Q Do you --

JUDGE FRIEDMAN: Who filed charges.

THE WINTESS: The association.

Q (By Mr. Israel) Those were the charges that were introduced in evidence yesterday?

A Yes.

Q Now, at anytime after consummating the agreement with Dextra, did you advise the association that you believed the association or any of its members to be bound by the terms of the Dextra agreement?

A Did I inform the association that the association employers were bound by that agreement?

Q Yes.

A No.

Q Did you at anytime inform the association that it was the union's position that the employer members of the association were bound by the Atwater agreement?

A No, we did not.

Q Now --

JUDGE FRIEDMAN: I am sorry, I might have missed a question yesterday while I was writing, did Dextra resign also from the association?

A I don't know if he resigned but he said he had an arrangement with the association that he could withdraw from the unit in order to negotiate the contract.

JUDGE FRIEDMAN: Thank you.

THE WITNESS: It was along those lines.

Q (By Mr. Israel) Incidentally, when Atwater advised you that it had resigned from the Association, did it advise you as to the effective date of this resignation?

A Did I say resign?

Q I thought you did.

A Well, what I mean to be because I am not sure if it was a resignation or not, but he was going to bargain with the union and withdraw from the authorization of the unit.

If I said resign I am not so sure if the letter states that because I don't have a copy of that letter with me.

JUDGE FRIEDMAN: The letter used the words "Atwater withdrawal or resign."

THE WITNESS: It would say one --

Q (By Mr. Israel) Whether it used the words withdraw from the Association or revoke the authorization, did it give an effective date as to that resignation or revocation?

A I can't remember.

I wouldn't know.

Q Did you receive the Atwater letter shortly after -- shortly before consummating an agreement with Atwater?

A I guess so.

Q Wouldit be within a few days prior?

A I imagine it would be around the time which the contract was negotiated.

Q Is it correct in June the Association had taken the position in writing that Penner was part of the bargaining unit, and that the local had taken the position in writing that Penner was not part of the bargaining unit?

A Yes.

In June.

Q In June.

And the last correspondence with respect to that issue was the Association's letter to you of June 30th?

A Yes.

Q Now, did there come a time when the union negotiated a separate agreement with Penner?

A Yes.

Q When was that?

A Sometime in '75.

It could be the fall, you know.

I am not sure of the exact date.

Q In June the Association had advised you that Esco was in their opinion or its opinion part of the bargaining unit and you had advised the Association that in your opinion Esco was not part of the bargaining unit, is that correct?

A That's correct.

Q And similarly the last correspondence was a letter of the Association to you on June 30th?

A Yes.

Q Did you subsequently negotiate and consummate a separate bargaining agreement with Esco?

A Yes.

Q When was that?

A That I am not sure of when.

Q Sorry?

A That I am not sure of when.

It might have been in '75.

It might have been in '76.

Q Similarly in June the Association had notified you that in its position Weatherguard was a member of the unit and you had advised the union -- the Association that in your opinion Weatherguard was not a member of the Association, part of the bargaining unit?

A Yes.

We sent a letter on that.

Q And the last correspondence once again was June 30th letter from the Association to you?

A I think so, yes.

Q Did you at any subsequent time consummate a separate bargaining agreement with Weatherguard?

A No.

Weatherguard, I think in a recent period, the last four, five months has gone out of business or been taken over by another company.

Q I see.

So you have not at anytime --

A Actually taken over by one of our companies that has a contract with the local union so the work is being done by one of our companies.

Q Weatherguard employees are covered by the contract with the company which took it over?

A I don't know what the relationship is.

We just found out that -- the work was being done, that Weatherguard was being done in our company or an employee of that company is working there too.

Q I see.

Now, Balfour was a company that the Association had advised in June was part of the bargaining unit and you advised the Association in your opinion Balfour was not part of the bargaining unit, is that correct?

A That's right.

Q Similary June 30th, was the date of the last correspondence, a letter from the Association to you on that subject?

A I don't remember the date on Balfour.

It may have been earlier.

I am not so sure.

Q Did you at any subsequent time negotiate a separate collective bargaining agreement with Balfour?

A Yes, we di.

Q When was that?

A I think in September, I think.

Q Of 1975?

A Five, yes.

Q At the time or times you consummated agreements with Penner, Esco and Balfour, did you notify the Association that you had done so?

A No.

We have never recognized them as being, you know, covered by the bargaining units.

We had previously started negotiations with all those companies.

Q In your direct testimony you mentioned two additional companies what are not Respondents in this particular case, North Shore and Carlin.

Now, as I understand it both of those companies were accpeted by you as being part of the original independent Association bargaining unit?

A That's right.

Q Now, did there come a time that you learned that North Shore had signed a contract with another union?

A North Shore had signed a contract, no, I don't think so.

Q Did there come a time when you were notified that North Shore was no longer considered by itself as part of the bargaining unit?

A Yes.

Q When was that?

A Probably September, I think.

Q What were the circumstances under which you receive such notification?

A I think we received a copy of a letter that they had sent to the Association saying they were resigning from the Association.

Q What if anything happened then?

A I think we corresponded with the company inquirying with their attorneys, some correspondence with the attorneys, inquirying was it accpeted and some arrangements to be made to discuss the matter so we would make some decision along the lines of whether it would be a unilateral withdrawal, whether it was one we agreed to.

Q Did you ever agree to such withdrawal?

A No, we didn't.

Q Did you ever consummate a collective bargaining agreement with North Shore?

A No, we didn't.

Q To the best of your knowledge has North Shore consummated an agreement with any other local?

A Not that I know of, no.

Q You mentioned something about NLRB proceedings involving North Shore, I believe?

A Yes.

Q Do you have any knowledge of such proceedings?

A I have some knowledge.

I know they are still pending in the Board.

There's been some hearings and decisions haven't been made.

Q Have not been made?

A No.

Some decisions are made and some decisions still pending.

Q Do you know what region that matter is pending in?

A North Shore, would be this region.

Q There was a mention of a company called Charla being part of the original bargaining unit.

Did you receive notification at anytime that Charla was withdrawing from the Association, withdrawing its authorization to bargain?

A I think we received a similar letter from Charla that North Shore had sent, resigning from the Association, copies sent to the Association.

Q Did you subsequently consummate an agreement with Charla?

A No, we did not.

Q To the best of your knowledge, has Charla consummated an agreement with any other local union?

A No, -- no one as far as I know.

Q Are there any pending Board proceedings involving Charla?

A Yes.

Q What region is that, if you know?

A In Manhattan.

Q Region 2?

A Right.

Q Now, you testified that through June 30th you had had five meetings with the independent Association.

Is it a fact that there were no further meetings in the month of July?

13 A There were no meeting with the Association in July, that's correct.

Q That's correct.

Did you have any meetings with the Allied Association in the month of July?

A I believe we had one.

Q Was that a negotiating session?

A It was at the Federal Mediation.

Q Negotiating session?

A Yes.

They called us and both parties appeared.

Q Was any offer made by the Allied at that meeting?

A No.

Not that I know of.

Q Were there any revisions by the local in its demands at that meeting?

A Oh, yes.

Q Could you briefly state what the revisions were?

A We revised our economic package down to its wages, wage demands.

We agreed that it would be acceptable for a long term contract, three year contract.

We made some specific proposals on funds, and we had been signing up independent employers, and we said we were willing to -- we gave them a copy of that.

Willing to negotiate around that too.

Q Did you in the month of July request any further meetings with the independent Association?

A I can't remember if we did.

There were meetings set up for the early part of August so it might have been, you know, in the works.

Q So is it correct that the negotiation meeting after the final meeting in June with the Association, independent Association, was sometime in the early part of August?

A Yes.

Q And was that meeting set up as a result of the independent Association requesting the New York State Mediation Board to set up a meeting?

A Might have been.

The State Mediation Board called us and they asked for me.

Q You did not contact the State Mediation Board and request to set up a meeting, is that correct?

A I don't remember if we did or not.

Q Do you recall the date of that meeting with the independent Association?

A The early part of August.

It might have been around the 8th, the 11th, I don't know.

Something like that.

They didn't appear.

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Q They did not appear?

A No.

The Association didn't appear.

Q Did you receive any prior notification as to why the Association didn't appear?

A No, we didn't.

We appeared and they didn't.

Q Did you subsequently learn why the Association did not appear?

A A lot of confusion, that's the way they told us when we met with -- we met the next time.

Q When did you meet the next time?

A Latter part of August.

Q Was that prior to your alleged meeting with Mr. Spigner on August 25th?

A Prior.

Q Prior to.

And where was this next meeting with the Association?

A In the State Mediation.

Q And was this a joint meeting?

A Yes.

Q Now, this meeting was in the latter part of August but prior to August 25th?

A Yes.

Q Had you had any additional meetings with the Allied

Association prior to this, subsequent to your July meeting?

A I don't think so.

I don't believe we did have any meetings with the Allied Association.

Q Now, as I understand it, up to the time of this meeting with the independent Association, the latter part of August, you had not as yet given the Association any specific dollar wage demand or specific demands for money increases in funds, is that correct?

A Well, except there are members who are aware of what was being signed up in the industry, every single independent member of the Association was aware of what was being circulated, what was being negotiated and so forth, so you know, it was generally known throughout the industry.

Q Were your settlements with all the independents identical?

A Basically, yes.

Q Wages, were they identical?

A Basically.

Q When you say basically --

A If it was a speciality shop as I told you before, made a special item, there might be a variation up or down.

Q Now, in your negotiation with these independent companies when you had a negotiation would you present them with a wage demand?

A What we did, we negotiated with a number of large companies around June 30th and in July 1st and a package outlining the guide lines of the membership authorization was developed and a settlement was reached and we used that as a guide line for other independent companies.

Q And it's your testimony that you believe that the members of the independent Association had general knowledge of these settlements?

A Yes.

The last stipulations that had been circulated.

Q At anytime did you formally send the Association specific demands with respect to money items, wages, and money changes in your various fund contributions?

A No.

We handed them at the August meeting.

We gave them a copy of the --

Q What exactly did you had to them at the August meeting?

A It was the stipulation that was being signed by independent employers throughout the industry at that time.

It was the same demands we had given the Allied Association.

It was spelled out in terms of complete one year agreement up until the time of June 30th.

There were proposals that were made on the table to the Association as well as the Steel Fabricators, the independent Association and all the employers.

The first settlement took place after July 1st, and that was being circulated specifically on complete contract.

Q Did I understand you to say that your settlement with these independents was the same as the original demands you had made to the Allied?

A No, I didn't say that.

I am saying proposal made and being discussed on the table up until June 30th, proposals, proposals of the employer's and the union, and that was being discussed up until June 30th.

After July 1st, when the contract expired, we worked out an agreement, and that was being signed by independent employers.

It was given to the Allied, it was given to the independent Association.

Q When you say proposals on the table with the Allied up to June 30th, was that the union's proposal or was it the Allied proposal?

A Each side had proposals.

Q What was, as best you recall, the basic wage settlement in the first year with these independents, if you recall?

A 65 cents wage increase.

Q 65 cents?

A Right.

Q Had Allied, prior to June 30th, proposed a 65 cent wage increase?

A No.

As I told you the other day, they wanted a freeze on the entire contract for three years.

Q Had you proposed 65 cents the first year?

A No.

We proposed a 15 percent increase.

Q Was that more than 65 cents?

A Sure.

Q So that the 65 cents was a number you negotiated d[illegible]tly with the independents?

A Yes.

Q Had Allied had any previous knowledge of a 65 cent proposal or settlement?

MS. HARPER: If Your Honor please, I don't know why we are going into any great extent into Allied's negotiation.

I don't see what bearing they have on the negotiation here.

I think we should confine ourselves to the negotation between these parties, and if they relate in any way to the independent **negotiation** I would see that being relevant.

But I don't think we ought to get into the negotiations with another Association.

MR. ISRAEL: I think they relate entirely and are interwoven throughout all the negotiations.

The Allied negotiation are part and parcel of the -- may I finish, please?

It was constant reference in every meeting to the Allied settlement, the Allied negotiation, the Allied contract.

There were constant negotiations with Allied, there was negotiating with the independents as a paractical matter.

We are now in August and we have settlements and dollar amounts and the independent hasn't even received a demand as to monies yet.

That's precisely what I am attempting to show that there were no negotiations, that the union refused to negotiate in good faith with the independent Associations.

MS. HARPER: Your Honor, I have no objection to anything they chose to show as to the negotiations between the Allied -- between the Association and the union, and they can go -- if any reference in those negotations was made either to the Allied or the independents, I think they are relevant.

But things outside of those negotiations I think are not relevant.

JUDGE FRIEDMAN: Mr. Spigner.

MR. SPIGNER: Your Honor, I support Mr. Israel's position because the stipulation affecting Spigner, which was introduced into evidence as Respondent's Number 3, makes reference to a condition affecting the Allied contract.

And I intend to pursue with Mr. Colavito the reasons or the rational as to why it was not implemented in the subsequent negotiation with Spigner.

So that the terms or the conditions or the -- of the Allied contract are very relevant to the defenses this Respondent intends to make.

MS. HARPER: It would be relevant possibly if they were a problem in connection with the 1973-'75 contract.

That's not here before us with Spigner.

Now, if he has a 301 suit, very well, he can bring it and that might be relevant there or refusal to bargain or an arbitration under his contract for the '73-'75 period.

But I don't see the relevance of that in the subsequent negotiations.

MR. ISRAEL: Excuse me, Mrs. Harper, you know very well there is a pending 301 suit.

MS. HARPER: It has no relevance here.

I think -- I would say that that was improper before this court.

MR. **SPIGNER**:: I think it's -- I think it's been made an issue in my answer.

I have denied the existance of the contract -- of the prior contract, and I intend to establish there was no

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prior contract with respect to Spigner.

And this directly relates to the refusal of the union to honor the stipulation requirement for conditions in the '74-'75 contract with Spigner which were to be the Allied conditions.

MS. HARPER: They didn't refer to the Allied conditions, Your Honor, for the period -- excuse me, let me finish now -- '75 on.

You are talking exclusively for the '73-'75 and that will be contested in the proper forum.

I don't propose to agree to litigate that here.

It has no relevance here.

MR. SPIGNER: I made an issue that there was not a contract with Spigner for the period that's alleged in here.

And I intend to demonstrate that the stipulation and the alleged agreement that was executed by Spigner with the union following that stipulation does not constitute a contract between the union and Spigner.

And the reason for that is apparent in the stipulation which requires that the union give Spigner an Allied contract.

MS. HARPER: Your Honor, what relevance would the subsequent Allied negotiation have to that I cannot fathom.

MR. SPIGNER: It has to do with the authority that the -- the alleged authority that the independent Association had to negotiate a contract -- a new contract, with Spigner and on what terms.

MS. HARPER: You can go into that.

I have no objection to that.

JUDGE FRIEDMAN: The Association --

MR. SPIGNER: The independent Association.

It's alleged Mr. Spigner, as a member of the independent Association, was obliged to enter into a contract as a member of that --

JUDGE FRIEDMAN: Was obliged to negotiate.

I don't know about the entering into a contract.

MR. SPIGNER: The allegation is that they were to be bound by the negotiating committee.

The exhibits that have been introduced into evidence -- the stipulation with respect to Spigner and the contract which is alleged to precede it, which is a -- which is claimed to have followed from that stipulation was the basis on which Spigner authorized the Association to negotiate a contract on its behalf.

That stipulation and the contract that emanated from it make reference to an agreement to provide Spigner with an Allied contract.

Now, I have made an issue of the fact that there was not a prior contract between the union and Spigner as alleged in here.

And I intend to establish that the reason that there was no agreement reached between the union and the negotiating committee on behalf of -- the negotiating committee of the Association on behalf of Spigner is because the union failed to implement its prior agreement with Spigner for providing an Allied form contract.

MS. HARPER: If Mr. Spigner == is Mr. Spigner claiming that he now should be part of the Allied group and therefore the whole question of the Allied negotiations is before this court?

I didn't think so.

I thought we were concerned with these independent Associations here.

MR. SPIGNER: I didn't make that assertion.

MS. HARPER: That's the only way in which the Allied negotiations as far as we can see would be relevant.

If there are not part of this proceeding and there's no allegation either unfairness to bargain, I don't see why we are concerned with the nature of those allegations or those negotiations.

MR. SPIGNER: Well, the Allied, as far as Spigner is concerned, the relevancy of the Allied contract wouldn't be important except for the fact that the stipulation which has been entered into the record, which reflects the current -- the prior agreement, that's the agreement that

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was supposedly expired on June 30th, makes reference to an Allied contract.

We intend to show, Your Honor, that there was no agreement between Spigner and this union from 19 -- from July 1st, 1974 to July, 1975.

JUDGE FRIEDMAN: I have to agree with the charging union here that that has nothing to do with the negotiation that occurred between this union and the -- and Allied unless you want to show what was ultimately reached as an agreement.

MR. SPIGNER: Your Honor, I intend to show the authority that was granted to the Association to bargain on my behalf and I say that I intend to show that that authority was limited to their right to obtain for me a specific agreement, and that agreement was reflected in the agreement that was to be reached by the union and Allied.

JUDGE FRIEDMAN: All right.

I grant you for that purpose, yes, the ultimate agreement.

But the negotiation themselves, what occurred during the negotiation between Allied and the union, I don't think are relevant here for that purpose.

All you are saying to me, unless I am mistaken, Mr. Spigner, and you can correct me if I am, is that you authorized the Association or your client authorized the Association to negotiate for your client upon the basis of a stipulation that whatever agreement was reached with Allied would be applicable to your client, is that correct?

MR. SPIGNER: I intend to show that that was the intention.

JUDGE FRIEDMAN: All right.

Now, if that was so, the only thing that would be relevant would be what agreement was ultimately reached with Allied, not the negotiation with Allied, not what occurred during the negotiation, but what the ultimate outcome of those agreements were.

If they failed to live up to their agreement and after they reached an agreement with Allied, they then failed, assuming your contention is correct, to give your client that agreement then that's something else again.

MR. SPIGNER: Is it relevant to delve into the failure or refusal of the alleged -- alleged failure, refusal of the union to enter into a negotiation with Spigner in July 1st, 1975 for an Allied contract as evidence of its continuing practice to refuse to give anyone other than the Allied Association a contract with the terms that the Allied Association would negotiate with them?

It's our contention that over the period 1964 through 1973, that the Association -- that the union consistently refused to grant to the independent employers in Association or otherwise contract terms comparable to the Allied Industries agreement, and the evidence of our stipulation of 1973, July 1, '73, and the contract -- the alleged contract that's been introduced into evidence here as General Counsel's 18, will reflect that attitude on behalf of the union, which would inhibit proper and true negotiation between the independent Association now and the union.

MS. HARPER: Do I understand that the position of Mr. Spigner is that the Association here is claiming it was an unfair labor practice on the part of the union to to give them the same terms as the Allied, in which case, of course, if they felt that was an unfair labor practice they could have filed charges, which they did not.

I don't think that that's the issue before us.

And the whole nature of the negotiation with Allied is not here before us.

There are no charges concerning the Allied.

JUDGE FRIEDMAN: I don't know.

Let's assume that for a moment that we are trying a surface bargaining case, that there's an allegation the Association didn't bargain with the union in good faith. would it not be proper to show that the union wasn't bargaining in good faith?

I think that's a defense in this type of action?

MS. HARPER: That maybe, but I still cannot see how the nature of the Allied negotiation, which were extremely protracted incidentally, would be relevant.

That was the nature of my objection.

JUDGE FRIEDMAN: All I am saying is, Mrs. Harper, the ultimate contract that was reached with Allied would probably be, under your defense, admissible and would be relevant in our defense.

But the negotiation themselves between the union and Allied --

MR. SPIGNER: I respectfully except, because I believe that questions relating to the matter in which an agreement was affected between the union and Allied is -- should properly be compared to the manner in which the union arrived at its agreements with the independent Association as evidence of whether the union was willing at any point to negotiate with the independents on the basis -- on the same basis or the same manner as they did with the Allied.

That's a reflection on the --

JUDGE FRIEDMAN: Are you contending now that there was an agreement they should do so with regard to all of them or just with regard to Spigner?

MR. SPIGNER: Well, it's my contention that the union failed to implement its prior agreement with Spigner to give a contract because it was a policy --

JUDGE FRIEDMAN: All right.

That's a breach of contract, and has nothing to do --

MR. SPIGNER: Well, Your Honor, I -- I started this colloquy with the bench in support of Mr. Israel's position, that these issues ought to be gone into.

And in -- and I reveal -- I have revealed to the bench our feelings that as far as the Respondent Spigner is concerned, the contract -- the manner in which the contract was effected between the union and the Allied is relevant to an understanding of whether or not true negotations were made -- were attempted in the period in which we are charged with having failed to refuse --

JUDGE FRIEDMAN: In other words, what you are saying now, if I can follow this too, Mr. Israel, is this what you are driving at, you are saying now when the union sat down or when the negotiating committee of the Association and the union got together to start their -- to negotiate a new contract at the expiration or even prior to the expiration of the old contract, that they had no intention of reaching an agreement --

MR. SPIGNER: With us.

JUDGE FRIEDMAN: -- with the members of the Association?

MR. ISRAEL: Yes.

MR. SPIGNER: Before they had --

MR. ISRAEL: I would hope -- may I just clarify --

JUDGE FRIEDMAN: You think -- are you saying now this was an attempt to break up the Association so they could deal with them individually?

MR. ISRAEL: I have no doubt about it.

But let me go a step further than that.

JUDGE FRIEDMAN: I think we are getting down to some of the issues I didn't know existed.

MS. HARPER: I'd like to know what some of the issues here are.

MR. ISRAEL: I think the specific issue in this case with respect to one of the aspects of the case, and that is, was it permissible for anyone or more of the members of the Association, independent Association, one or more points of time, either to withdraw from the Association or to withdraw their authorization for the Association to bargain on its behalf depends under case law, under Board law, on certain situations, did an impasse exist.

Mr. Blyer disagrees with my interpretation of the law, but that's a legal issue.

Was there a collapse of negotiations, which would authorize a withdrawal from the Association or withdrawal of authorization, or I submit to you number three, was there fact --

JUDGE FRIEDMAN: The cause of that collapse might be very important.

MR. ISRAEL: The cause of the collapse or in fact, Your Honor, was it factual correct to state that really there were no negotiations, that we had a sham situation.

JUDGE FRIEDMAN: Let's assume for the moment that's true --

MR. ISRAEL: May I say the relevance of the Allied negotiation, which is what we are talking about now, to this particular issue is, in determining whether in fact there was either impasse, or collapse or no negotiation really with the independent Association, I would say would be totally proper for you to look at what was happening in the industry with this union at that time in terms of negotiations with the other half of the industry.

If you had an A and a Z situation you can reasonably say, well, why were negotiations proceedings one way here and a completely different way the other place.

JUDGE FRIEDMAN: Are you tell me now that -- let's assume for a minute there was no Association at all and there were two separate employers, and a union was negotiating with employer A and employer B.

Would there be any relevance between what the union negotiated with employer A as against what was negotiated with employer B?

MR. ISRAEL: None, except --

JUDGE FRIEDMAN: What's the difference between one group of employers and another group of employers or a single employer or a single employer?

MR. ISRAEL: The difference is were are not talking about whether the second group of employers has a bargaining obligation.

We are talking about the nature of its bargaining obligation.

In this particular case we are not saying that the members of the Association didn't have to bargain with somebody on behalf of their employees.

The question is, in the context of these negotiations could they withdraw from the Association or withdraw their authorization so as to bargain individually with whom so ever it was legal to bargain with.

That's the difference.

You don't have that question in your single employer vis-a-vis single employer situation.

Here the question is, could they withdraw that authorization because of either impasse, a collapse or no bargaining.

And to determine whether there was either an impasse, a collapse or no bargaining you should look at and see how the union was negotiating with the other employers in the industry, and compare it to what was happening in this situation.

MS. HARPER: I might say for 165 contracts in this industry --

JUDGE FRIEDMAN: Mr. Blyer, you have been sitting here very quietly and patiently and I wonder if you can shed some light?

MR.BLYER: I don't think I can shed much light because I don't think there's much to respond to.

I disagree with a lot of things that have been said.

And I do agree with the point that I don't see much relevance in comparing the two negotiations.

As you pointed out, the union could have been bargaining in bad faith with one group and could have been bargaining in good faith with another group.

I don't see the relevance of the two.

Of course, there were no charges filed here, and the contract has been reached with Allied.

So I don't know what they intend to show.

I assume they are trying to show that there was in good faith bargaining with Allied and bad faith bargaining with the Association.

They never filed any charges against this union for bargaining with bad faith.

They are bargaining with bad faith and yet you reached an impasse.

You know, I have problems with that.

And also I think Mr. Israel overlooks a serious problem here, that as far as I know Board law nothing prevents an employer whose part of an Association with the

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consent of the union to withdraw.

Now, if Mr. Israel is -- perhaps is trying to suggest that the Association didn't authorize a particular employer to withdraw.

First of all, I can't be positive of this, but I remember researching this issue a year ago, and I don't believe there's any authorization or permission required.

In other words, an employer member of an Association, even though it's contrary to its bylaws, can resign or withdraw from an Association and if an union consents to it, can lawfully enter into an agreement with the union.

And that's -- and certainly that is no reflection on the union in the sense -- to prove a case that there was an attempt to undermine.

Again, I can cite cases for it and I am almost sure that that is the law.

I think he's overlooking a major point here, these employers, Dextra, Atwater and we had reference to North Shore and Charla, which are sort of up in the air, but at least the first two, as far as I know they withdrew with the consent of the union.

There's no contest about that.

To me that shows no undermining.

MR. ISRAEL: Your Honor, the issue at this point is not Dextra and Penner.

The issue is whether the other companies could withdraw.

And at what point in time.

And the question --

MR. BLYER: I agree with you.

That is the issue.

MR. ISRAEL: That is the issue in this case.

MR. BLYER: That's right.

MR. ISRAEL: Now, we submit to you that in any one of the three situations an employer could withdraw its authorization.

I am not sure precisely which this case will turn out to be, one, impasse, one possibility, collapse of negotiations, number two, which I suppose is a form of impasse, or number three, no bargaining at all in the first instance or sham bargaining or surface bargaining, and that is what we are attempting to prove, that these particular companies, not Dextra and Penner, but the others under Board law could withdraw their authorization at a point in time.

And that point in time depends on the status of the negotiations with its Association.

That in turn, your characterization of those negotiations, I submit, brings into relevance other concurrent negotiations because that would show whether there was surface negotiation with this Association or no negotiation at all.

MS. HARPER: I wonder if counsel has any authority for that.

I have certainly seen none in all these years for the proposition you raise here that you can look and see what another Association is doing, whether there's no claim of bargaining to establish whether or not there is a fair bargaining with your Association.

JUDGE FRIEDMAN: I am trying to think back.

I know of no other Board case where this would be -- this has occurred.

However, I will say this, that there is -- this is not to say the Board might not consider that in coming to a conclusion as to whether or not the Association or the union was bargaining in good faith with the Association as an Association.

MR. BLYER: It's a bit --

JUDGE FRIEDMAN: Whether or not a comparison between the two of them is a viable necessary part of their proof, or even if it's relevant at this point I am really quite stymied.

MR. BLYER: It's really far fetched.

They reached a contract with the Allied.

There's no charges filed.

I think everyone is going to admit they were I guess bargaining with good faith with Allied, and if that's the case, I mean what does it show with regard to the negotiation with --

MS. HARPER: We don't --

JUDGE FRIEDMAN: It could even show equally that they were attempting to bargain in good faith with the Association.

I think it could be --

MR. BLYER: It doesn't cut either way.

JUDGE FRIEDMAN: It could cut in either way.

MR.BLYER: I also object to this fishing expedition.

Mr. Israel sort of conceded he doesn't know which way we go one time he's talking collapse in barganing, I see two positions and the other they never bargained at all.

I wonder first of all if they are inconsistent positions and second, I have an objection to any expedition here.

JUDGE FRIEDMAN: I don't know --

MR. ISRAEL: I don't know --

JUDGE FRIEDMAN: I know one thing I am not going to permit a civil lawsuit to be tried before me unless the facts of that suit are relevant to the --

MS. HARPER: No relevance here whatsoever, none at all.

JUDGE FRIEDMAN: -- to the case here.

I am going to make the decision that I don't think that the terms under which -- the manner in which the bargaining was approached and ultimately an agreement was reached with Allied are relevant, except for the -- if you want to put in the ultimate agreement with Allied in the sense that Mr. Spigner is --

MS. HARPER: I don't quite follow that.

Maybe there is some possible relevancy that we can see at a later point but certainly as far as the major suit, I would agree.

MR. ISRAEL: Your Honor, to quote Mr. Ziskin of yesterday, I have something more than an exception, I have a vigorous exception.

JUDGE FRIEDMAN: You have.

MR. ISRAEL: I state I think very frankly that Your Honor is in error.

I think this goes to the heart of the case.

I think the two negotations, as you alread heard, the question of Allied contract vis-a-vis independent contract is totally intertwined.

I think the manner of the negotiations are --

JUDGE FRIEDMAN: Let me ask you this, I haven't denied the motion, I am just really -- I mean I -- I am trying to figure something out here, in what manner is it relevant, and you still haven't answered me, Mr. Israel, as to how the negotiation went with Allied, in what manner are they relevant how the negotiation went with your client?

You're telling me that there are three major matters in which -- which would permit three -- three major circumstances under which the parties to an Association would be permitted to withdraw, one would be an impasse, one would be if they collapsed completely and the third would be a failure to bargain -- whether there was any bargaining at all.

I still think that there's no difference between bargaining between two -- a union with two separate individuals and a union and two separate Associations.

If in fact they didn't negotiate with your Association, then it stands to reason they didn't negotiate with your Association on the basis of what took place at the meetings between the parties.

Not what took place between the meeting of the union and another Association.

I don't -- the fact that they were willing to give another group a more beneficial terms let's put it, they may have had a very good reason for that.

I don't know whether they did or didn't.

I am just saying they may have.

It's an economic matter, I am sure.

And the fact that I would give, if I were a union negotiator, employer A better terms than I would give employer B because of perhaps the circumstances under which employer A is operating as against the circumstances under which employer B is operating, I don't see then that if there's -- let's assume there's an 8(b)(3) allegation against the bargaining union, what would the negotiation with the employer who got the more favorable terms be?

MR. ISRAEL: I think, Your Honor is making,is that you are assuming that the question or the issue I am trying to get at is whether the Allied was given a more favorable contract in this negotiation.

JUDGE FRIEDMAN: I don't know whether it was.

MR. ISRAEL: This is not the issue.

The issue is a comparison of the mode of negotiations show that we are in August and the testimony today indicates in August notwithstanding Mr. Colavito's statement that he had no objection to negotiating with this newly formed Association, we are in August and we are going into the sixth meeting, and we have not as yet had the union's specifically put -- specifically its demands before this Association.

At the same time this union negotiating with independents is negotiating and signing specific contracts with specific amounts.

At the same time it's negotiating with the other employer Association and putting it's demands on the table, dollar amounts.

Yet, two months into the strike there isn't a dollar amount, a demand on the table in the independent negotiations.

I say a comparison of the two negotiations, the mode as opposed to the final resut indicates that the negotiations being conducted by the union with the independent Association, it was spurious negotiation.

They were surfaced.

They were in effect no negotiations whatsoever.

And that can be seen by simply comparing the mode of the negotiation, not the ultimate settlement which I am not really interested in.

MR. SPIGNER: Your Honor.

JUDGE FRIEDMAN: Yes.

MR. SPIGNER: I may have gotten off the track but that's the point which I originally rose to support Mr. Israel.

And the point of the stipulation that I rose was, to be able to explore the rational, the reasons why the stipulation was not implemented in respect to giving of an Allied contract for the purpose of demonstrating that it's been union position all this time to separate independent employer contracts in such a way from the Allied contracts that no serious negotiation with independent employer previously or even now were ever held until Allied contracts were executed -- were completed.

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So -- in other words, what I am trying to say is that there was a pattern or a mode previously in existence and followed in these current negotiations that would inhibit true bargaining until an Allied agreement had been reached.

MS. HARPER: If Your Honor, please, I'd like to be heard on this, if I may.

All of these negotiations took different patterns in different years and with different employers.

I think it's improper, at this hearing, to go into what happened in any of the others.

In some case -- situations we had more economic strength.

In some we had less.

In some we had protracted strikes and therefore had to give up some of the benefits, let's say we had a protracted strike with the Allied, we had given up some benefits that we were able to get from the independents.

The union therefore, when years later it comes to negotiating with the independents offer the -- or with the Allied, may not be willing to swap what they have.

They are not willing to down grade certain advantages that they got, but that would not make it either an unfair labor practice or an improper action by any union.

They will deal with economic strength.

The question with each employer is its relationship

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with that employer and the way it carried on its negotiation.

It may have hard bargaining with one and not hard bargaining with another for various economic reasons.

But I don't think that in order to determine whether they are acting improperly with one you may look at the way they are acting with another.

JUDGE FRIEDMAN: Let me ask you this, assuming for the moment that they had some sort of aside agreement with Spigner, that they would give Spigner the Allied contract --

MS. HARPER: In '75?

MR. SPIGNER: '73.

JUDGE FRIEDMAN: '76.

MS. HARPER: All right.

The contract expired in '75.

JUDGE FRIEDMAN: In '76, and Spigner went into the Association knowing full well that it had a signed agreement with a union for a dofferent contract than it was going -- than the other contractors were going to get -- I think this is what you are saying --

MR. BLYER: Without getting --

JUDGE FRIEDMAN: Isn't that a little -- I don't know, there's something very peculiar about this.

MS. HARPER: It's in view of the fact that there was never any writing by anybody at all Mr. Spigner makes no claim.

The only claim heard during this hearing is he had a stipulation in 1975 covering the '73 to '75 period, but there is nothing that we have been shown here that covered the period after that.

He joined the Association --

JUDGE FRIEDMAN: In '76 you were entitled to the --

MS. HARPER: He hasn't seen it yet.

MR. SPIGNER: I will tell you why there is.

If Your Honor will examine the Spigner contract and the Spigner stipulation you will observe that the stipulation was made in '73 expires by its term in one year, in '74.

Subsequently it says that that agreement was to be renewed for a year until June '75 with an Allied contract.

In May of '75, which is the date in which the contract that's been presented into evidence here as Counsel's Exhibit 18, has been executed, also that there no term for expiration of that contract at all.

It's blank.

It's our contention that in May -- that if the union had intended that Spigner should be bound only by the stipulation for a one year contract originally, '73-'74, which expires in June, '74, they would not have made a contract for one month.

What's been presented here is a contract with an open

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expiration date executed in May 1974.

It's not the Allied contract, it's another contract.

And it's this Respondent's contention that it was understood at the time of the execution of that agreement that an Allied contract was to be forthcoming for a period more than one month, for a period more than one year.

JUDGE FREIDMAN: Well, didn't --

MR. SPIGNER: They had made a separate deal with us because we wouldn't sign with the union on the general independent stipulation.

JUDGE FRIEDMAN: All right.

I understand all of that,Mr. Spigner

And I understand all of that is background so far as Spigner is concerned.

But when it came to the 1975 negotiation Spigner, as the testimony has come out so far,was the main spokesman and the main --

MR. SPIGNER: Irving?

JUDGE FRIEDMAN: Irving.

Is Irving Spigner not -- was he not at that time a part of Spigner --

MR..SPIGNER: Not since July 15th.

July 15th, he went into business himself and disassociated himself from Spigner entirely.

MS. HARPER: But he was head of the Association never-

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theless.

MR. SPIGNER: I don't know about that.

We will get into the bylaws, we will find out whether he was or he wasn't.

MS. HARPER: Let's say he was held out to be.

JUDGE FRIEDMAN: Did the Association ever inform the union that he was no longer authorized to speak for them?

MR. SPIGNER: I have no idea.

Maybe Mr. Israel knows that.

MR.ISRAEL: The answer to that is no.

JUDGE FRIEDMAN: You never informed anybody that Spigner could --

MR.ISRAEL: No.

We told the union that Spigner could speak for the Association and members ofthe Association, informed it in writing, informed Mr. Colavito.

JUDGE FRIEDMAN: In other words,then there are two Spigner's?

MR. SPIGNER: That right.

That's the distinction we have been trying to make with the union and everybody else now since July 15th.

JUDGE FRIEDMAN: The Spigner that has been -- when Irving Spigner became the spokesman originally before his alleged withdrawal and the separation of the companies --

MR. SPIGNER: He was --

JUDGE FRIEDMAN: -- he was a member of the Spigner firm, was he not?

MR. SPIGNER: Yes.

JUDGE FRIEDMAN: At that time Spigner -- the Spigner firm was a member of the Association.

Now -- through whoever it -- the commitment was it was or Irving Spigner or anybody else's --

MR. SPIGNER: I am not making an admission yet but for purposes of discussions,yes.

I don't know that's so.

When Iriving Spigner gets on the stand we will explore that part of it.

JUDGE FRIEDMAN: Are you saying that -- did you notify the union at anytime -- the old Spigner firm that continued on without Irving Spinger, did they ever notify the Association or union or anybody else?

MR. SPIGNER: The members of the Association and the union were informed he was no longer with Spigner.

MR. BLYER: The Judge is not asking that question.

JUDGE FRIEDMAN: I say did the old Spigner firm ever withdraw from the Association?

Did the ever notify anybody --

MR. SPIGNER: When we get to the question of withdrawal, which is the one that Mr. Israel is exploring now, under what circumstances we may withdraw, I can answer that better.

We didn't formally notify -- we didn't write anybody to notify them of that.

We informed verbally members of the Association and the union business agent that he was no longer a member of the firm and nobody -- and that nobody in the Association could negotiate with Spigner.

That's the business agent was informed of that.

MS. HARPER: Negotiating for Irving Spigner, but for the Spigner firm that was part of the Association, are you now taking this position --

MR. SPIGNER: We --

MS. HARPER: We were so advised they were not part --

MR. SPIGNER: We intend to establish with the union business agent that he was informed that nobody had a right to withdraw or negotiate for Spigner & Sons in that organization.

MR. BLYER: Negotiations had commenced though?

MR. SPIGNER: At the time of that notice?

MR. BLYER: It would have to be.

MR. SPIGNER: Did you speak with the agent on that?

JUDGE FRIEDMAN: Negotiation began before the old contract expired.

MR. BLYER: Middle of June?

MR. SPIGNER: I am not arguing that.

I am arguing what occurred subsequently.

We will get to that when we get to it.

I don't know where we are.

MS. HARPER: We were on the question --

JUDGE FRIEDMAN: No, I think -- we have explored a great deal here.

It's very enlightening to me, of which matters I was quite unaware, and I didn't realize where we were going.

If there is some possibility, I don't see where it would be, but on the remote chance there is some possibility that the negotiation with Allied were somehow or other tied in or with explanatory of the Association -- of the negotiation with the Association, then I suppose that they are relevant.

I would say this, that I would have to be shown that.

I will take the testimony, but I will entertain a motion to strike unless they show that there is something more than just a mere -- in other words, I would have to show that by the testimony with regard to the negotiation with Allied there is a enlightment of some sort which would indicate a failure on the part of the union to negotiate withthe Association.

MS. HARPER: Your Honor --

JUDGE FRIEDMAN: I have never heard it doesn't yet and I will admit it's a new one to hear.

I don't know whether it could be a defense or not.

But the Board has -- is always exploring new fields,

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and I am --and I am going to take it on that basis to see whether or not it can be.

I ordinarily -- I would go along basically and just stick to the -- to Board precedent,but this is sort of a novel situation in this respect, and I think perhaps it should be explored.

At least until we can see whether or not it has any bearing, whther it does enlighten the --

MS. HARPER: There is only one thing I would like to point out, and I don't know whether you want to post any limit to those, those negotiations with the Al[illegible]ou went on for a period of six months, were very, very extensive as we went on.

Now, I don't know to what extent you are going to permit that.

I think we could be --

JUDGE FRIEDMAN: I am certainly not going to permit a day-by-day or a meeting-by-meeting == the deals between the union and Allied.

I certainly am not.

I will let the counsel for the Respondent explore, as I said, what was ultimately reached if they want or perhaps to a certain extent some of the approaches, but to go into a meeting by meeting account of what occurred, I will not permit that.

it will unduly lengthen this proceeding where it could become impossible to handle, number one.

And number two, I don't see that that would make that much difference.

I will say this, that if they show that they offered early in the game to Allied certain items which they refused to offer to the Respondents here, as Mr. Israel has pointed out, the money items, certain other items, it might possibly have some relevance.

But to go into the day-by-day or meeting-by-meeting negotations, no, I will not permit that.

MR. BLYER: I know that this has been very long, but just one point.

I think you are aware that our position of course is just to the --

JUDGE FRIEDMAN: Yes.

MR. BLYER: I don't care if you let this in.

I can understand the problem.

But I would point out one, that our position is just to the contrary, rather than the union engaging -- being guilty of engaging in bad faith, perhpas if anything it was the other way around.

The second point is, I am not sure very frankly whether under Board law even if they were bargaining in bad faith, the union, of course I say they were not --

JUDGE FRIEDMAN: Whether that excuses --

MR. BLYER: Absolutely.

I respect your decision and you let it go in.

I haven't seen a case on it.

I have read a lot of cases on unusual circumstances.

I think the proper procedure is to file your charge and there was none ever filed here.

But let's go into the -- into it for a while.

I don't want to delay this any more.

But I just wonder if he's got any law on that.

Again as I say maybe a new area, who knows.

JUDGE FRIEDMAN: From my experience, and I don't think my experience is very limited, the number of years in this position, is so limited that I would -- I would say this is an entirely new -- an entirely new exploration.

I have never seen or heard of before.

MR. BLYER: I don't want to delay us any more.

I have other witnesses.

JUDGE FRIEDMAN: Let's go.

How far do you intend to pursue --

MR. ISRAEL: I don't intend to go into what Mrs. Hapрer characterizes as extensive negotiations on a day-by day basis.

I have no intention of doing that.

Some idea of where the negotiations -- of the two negotiations were at the same points in time without getting into an item by item analysis of what they were negotiating with the Allied, I have no intention of doing that.

JUDGE FRIEDMAN: Let's see where we are going.

Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

Q (By Mr. Israel) Mr. Colavito, how many negotiation sessions were there with Allied in August of 1975, if you know?

A I think there was one, I think.

Q One negotiating session?

A In August, I believe so.

Q All right.

At that session I believe you testified the union revised its demands?

A No.

It was the first.

The first session in July.

Q It revised its demands?

A Yes.

Q Now, there's one further negotiating session in August with the Allied?

A Yes.

Q Was there any further revision of the union demands at that session?

A No.

Q No change whatsoever?

A No.

Q Now, you had how many sessions with the independent Association in August?

A We had two, one in which they didn't show up.

Q And the second one was the latter part of August but prior to August 25th?

A Yes.

Q All right.

And this was at the State Mediation Board?

A Yes.

JUDGE FRIEDMAN: At what point did these negotiations --

MR. ISRAEL: This is the latter part of August with the independent Association.

JUDGE FRIEDMAN: How long did the independent Association bargain after this?

MR. ISRAEL: The last meeting was either December or January.

Q (By Mr. Israel) Were you present at that meeting, the meeting with the independent Association, the latter part of August?

A Yes.

Q Who was present for the Association?

A I think their full committee.

If there was one missing -- I think it was the full committee of the Association.

Q Mr. Colavito, will you state again who was that negotiating committee?

A I think the full committee of the Association was present.

Q Mr. Spigner?

A Yes.

Q Irving.

When I refer to Mr. Spigner I am referring to Irving Spigner.

And he continued to be the chief spokesman, wouldyou say?

A He was at the meeting.

Q Was he the chief spokesman at that meeting?

A Yes.

Q Was Mr. Peelle at that meeting?

A I believe he was there too, yes.

Q Can you summarize what was stated by the union at that meeting with respect to any wage demands?

A Well, they had the stipulations from the original employer and the employees, because the employees had it too who were on strike, and they questioned us about each specific item of the stipulation.

And we explained.

Q Did you request of the Association that they execute an contract which contained wage improvements which would be the same as you negotiated with the independents?

A Yes.

We could arrive at an agreement on that basis.

And also was a one year agreement that we had also been willing to discuss a second and third year too.

Q 65 cent an hour wage increase?

A We didn't discuss the terms of the second and third year.

We said we would be willing -- we put before them the same agreement that we had with the independent employers and we are willing to go beyond that in terms of negotiating a second and third year.

Q I am asking you, did you say you would be willing to sign a contract, first year wage increase, which would be 65 cents?

A Yes.

Q And did you advise the Association as to what your demands were, if any, in the first year with respect to contributions to the funds?

A Well, it was a pattern established over many years that the funds were always on the basis of whatever was finally reached with the Allied.

Q You did not tell the Association that you wanted X cents per hour in the first year, is that correct?

A We gave them an idea of what we thought the outside limit of the -- of contributions would be required for the first year.

Q But was your final position with respect to the fund contributions, the independent Association would have to accept whatever the Allied ultimately accepted, the fund contributions in the first year?

A Yes.

There was never any problem about that.

Q Did the independent Association as you to negotiate directly with it concerning the amount of fund contributions?

A In the June 30th demand upon us they wanted specific amounts, yes.

That was the only time.

They refused the contributions that were in existence at that time and they wanted a reduced amount to be contributed.

Q Did you refuse to give them specific amounts?

A Yes.

I just gave an outside limit for all the funds together.

We didn't break it down.

We said the total of all the funds would come to a certain amount.

Q What was that amount?

A I think five percent we said.

Q Five percent?

A Yes.

Q Did they ask for a break down of the five percent per fund?

A No.

Q And you did not furnish a break down?

A No.

Q Was there any reason why at that time you were unwilling to negotiate with the independent Association specific contribution increases to specific funds of these employers?

MS. HARPER: That question has several negatives in it which presupposes something he hasn't testified to.

I couldn't answer that.

MR. ISRAEL: I think he can.

MS. HARPER: I'd like to have the question reread if we may.

I don't think it's a proper question.

(Record read.)

MS. HARPER: I will withdraw my objection.

JUDGE FRIEDMAN: All right.

A The policy of our organization in relation to the trust funds, that all the employees paid along the same guide lines.

It was percentage each and every employee the same.

If it was 2 percent they all paid 2 percent.

We never had a situation one employer paying more than another in terms of that guide line unless they were phased in as a newly organized shop.

Every employer -- we never had any problems with employers.

Every employer recognized that there had to be a uniform basis for contributions, and it was always in this organizztion that on contributions to the fund they always agreed to go what was finally negotiated with the Allied because they were the trustees, they were more familiar with the funds and so forth and no one ever raised any objection about that question.

Q Excuse me, who are the trustees?

A Who -- six funds.

Various numbers.

Allied appoints the employer trustees.

Q Trustees were representatives of specific employers, were they not?

A Representatives?

Q Yes.

A They were from the industry.

Q From the industry?

A Employers, yes, from the industry, yes.

Q Union trustee is am employer trustee, is that correct?

A Yes.

Q Now, prior to the '75 negotiations you had never negotiated with the independent Association before, had you?

A This Association?

Q Yes.

A No,

This is newly formed.

Q You are saying in prior negotiations the industry had gone along with the Allied settlement on the fund contributions, is that correct?

A All the employer had, yes.

Q Had the independent Association notified you that it was willing to accept the Allied's settlement on fund contributions?

A They never objected.

The only objection, if you want to interpret it, was on the question of giving us a reduced contribution.

He didn't know if it meant to be separate for them or for the whole industry.

Now, we raised an additional point in this negotiation about having employer trustees selected throughout the industry on an industry-wide basis.

They were not interested in that.

The independent Association was not interested in having individual employers outside the Allied as trustees of the employers of the industry.

They pooh-poohed, we are not interested in that, we said.

So, if I am going to interpret it, I thought they would mean the contribution they were talking about, was not they made a special contribution on their part but they wanted to be established as standards for the industry.

They never raised that as a point of reduced contribution.

It could be interpreted as such but they never raised any objection to an industry-wide contribution guide line, never.

Q Did you understand when the Association asked for a reduction in contributions that to mean they were preapred to go along with whatever Allied agreement with respect to contributions?

A I don't know what they had in mind.

I put all the facts on the table, what I thought it was they were looking to, because looking to reduce a lot of other things too.

Q Mr. Colavito, if you didn't know what they had in mind, did you ask them what they had in mind when they said this?

A I didn't think it was necessary.

Because they were so far down in retrogression on it there was no sense in bargaining with that position.

Every single clause in the contract was reduced.

Q If you felt there was no sense in bargaining did you stop bargaining?

A Of course not.

Given an answer to bargaining with their reduction."

Q Was there ever a resolution of the trustees of any of your funds that the contributions to the firms would be determined by negotiation between the Allied Association and the union?

A By the trustees, no.

Q Trustees had nothing to do with this?

A Of course not.

Except they were sitting at the table wearing two hats, maybe.

Some of the trustees were also employers representing an Association.

Q The determination of the amount of the contributions to the various funds would be negotiated strictly between the local, your local and the Allied Association, was a determination made by the local?

A No.

Q Who was it made by?

A I think it's made by everybody concerned, all the independent employers always felt that was the only way it could be.

The Association fought for a monopoly on the trustees.

And we were caught in the bind of not negotiating different contributions with different employers.

Q What would have prevented you from negotiating specific contribution rates with the independent Association and then seeking all other employers to accept that agreement?

A We did that in the past.

We really -- negotiating in the past in terms of different conditions and the independent set the pay for different conditions.

Contribution was always a uniform question.

Q Mr. Colavito, I am asking you only about contributions.

MR. ISRAEL: Would you read back the question again?

(Record read.)

A We don't have the ability to be able to guarantee because we negotiated with independent employer, that we will be -- that we will be able to guarantee the rates for everybody else.

If we can't, we will not be doing justice to any individual employer to have him pay an increase rate.

We did negotiate with independent for a guarantee on vacation with the employers because the trustess were trying to cut the benefit and the vacation.

Inasmuch as we couldn't do it on industry-wide basis we had to drop even what we wanted in that respect.

We voluntarily dropped it because it would not be right for the employer to be treated differently on those questions.

We tried to treat them all the same.

On economic matters all the employers were treated the same.

And language question -- various differences devloped on language matters.

Economic matters we always treated the same.

The only time the Allied can say they -- 100 percent all the time -- on contributions 100 percent consistently has always been that the Allied, whatever was negotiated with the Allied, were the guide lines for all the employers.

Only on the funds.

Q And with respect to the funds only what would have prevented you from negotiating a contribution rate with the independent Association and then asking all the other employers to accept that rate rather than negotiating a contribution rate with the Allied and asking everyone else to accept the Allied agreement?

A Nothing.

We did that before.

We negotiated a contribution on pension and welfare in the previous years and went to the Allied, were able to achieve it.

JUDGE FRIEDMAN: But -- what?

A Went to the Allied and were able to achieve it.

But if you can't achieve it, you have to go back on the uniform basis.

Now -- we had an inconsistent pattern in terms of who set the guide lines on economics in the industry.

Sometimes it was the independents and sometimes it -- the Allied.

But on contributions it was always unifnorm.

But the independents offered a reduced benefits as well as reduced contribution.

Q Did I understand the first part ofyour answer nothing would have prevented you from negotiating contribution increases to the independent Association?

A Make the attempt?

Q Yes.

A Nothing to prevent you from making the attempt.

Q Did you attempt to make the attempt?

A How could we.

As far as the attempt go, the attempt is always there.

The reality of it was we were so far apart it wasn't funny.

Q Incidentally, at that point in time what had the Allied offered you with respect to fund contributions?

A No, the freeze. A freeze on what existed.

Q Freeze.

I see.

A Which was greater than the independent Association, okay.

Q Did you consider that realistic?

A The freeze?

Q The Allied?

A The Allied was more realistic than the independent but not realistic enough.

Q That was a little out of the basement?

A It would be a problem for us, yes.

Q All right.

Now, did you have any other meetings with the independent Association prior to August 25th meeting with Mr. Spigner?

A I mentioned we had two meetings in August.

Q One they didn't show and one you just testified to?

A Yes.

MS. HARPER: That's about the fifth time we have had it and I think we ought to try to move along.

MR. ISRAEL: Thank you.

JUDGE FRIEDMAN: I would go along with the suggestion.

Q (By Mr. Israel) Now, how was this August 25th meeting set up?

A I think it was the employer of Master Craft, Iron Craft that approached one of our members, suggesting a meeting of Spigner and myself, and he gave them the -- gave me a telephone number for me to call and I called Irving Spigner and we set up a meeting.

Q Who was the member that was approached?

A Of our --

Q Yes.

A I think -- I think it is Mannsmann.

Q When you say member, you mean either delegate or officer --

A He's an executive board member.

Q I see.

You called Irving Spigner?

A I called him, yes.

Q Where?

A Where?

I don't know where it was.

I had a telephone number, I called it, and --

Q Incidentally, at that time did you know that Mr. Spigner was no longer affiliated with Spigner & Sons?

A It was in August, I may have known.

I don't remember now.

Q What did you say to Mr. Spigner in that telephone conversation, and what did he say to you?

A I said I understand that you're suggesting a meeting to take place.

We talked about various dates, a time, work that out.

Q Did you discuss who would be present at this meeting?

A It was understood it would be he and I.

That was the position that the -- what Master Iron Craft suggested, just the two of us get together, perhaps we could get to the heart of the problem.

Q I see.

Did Mr. Spigner seem as if he was expecting your phone call when you called?

A Yes.

Q And did you meet?

A Yes.

Q You met at which hotel?

A Sheraton Tenney at LaGuadia.

Q Daytime, night time?

A Afternoon, I believe.

Q Was anyone else present?

A No.

Q Did you take a room?

A No.

It was in the lobby..

Q The meeting you are now talking -- you are now going to relate took place in the lobby?

A Yes.

Q Were there other people around?

A It was a big lobby, coffee shop nearby.

Q Where is that Sheraton Tenney?

A Near LaGuadia.

Q This meeting took place in open in front of anybody who happened to pass by?

A Yes.

Q Did you notice any other employers that you recognized?

A No, I did not.

Q Were there any representatives of the union other than yourself?

A Not that I know of, no.

Q What was said at the meeting?

A We discussed a couple of issues, like vacations, severence, as I said he had an idea, he said maybe we could -- severence provides for one percent contribution by the employer to a fund, and after a period of two years the fund picks up some liability percentage wise, five times what the contribution of the employee was, and he was suggesting perhaps there's some opposition by the employers, maybe we can solve that problem by getting insurance from Lords of London.

I thought the severence set up was pretty good in terms of economic contributions for the employer, one percent.

I said but if you have a proposal, get it, we will examine it.

He discussed the question of vacation to some extent.

OUr proposal was for a very small modification on it.

And then we went into the question of Association, that they would never agree because we want -- we went into the discussion of what our package was that we met on the first year.

And he said as far as his Association goes they would never agree to sign a contract with 455 unless they got what they wanted.

And this is no wheres near what they wanted.

The wanted all the terms of the Allied and so forth and so on, the same old story --

Q Excuse me, Mr. Colavito, instead of telling me the same old story, tell me what he said?

A Sure.

He wanted the terms that -- the difference of it -- that exist in the Allied agreement, plus all the things he was talking about at the June 30th meeting -- proposals, okay.

And I think I enumerated == if you want me to enumerate those I can.

Q I want you to state what he said --

A He said all the terms, he didn't go into them all, but I had a copy of all his terms.

He said that they were strong, they had 24 Allied members at their meeting, and after this was over most of the Allied members would join his Association.

He said that rather than have his employers signed up with us, he said he would fight any employer who is a member ofhis Association who wanted to sign up with us and rather than have those members sign up with us, he would advise those people to sign with the Teamsters.

He said three have already done -- gone to the Teamsters, are ready to go.

And he said before he will sign with us they will bring in the Teamsters and they will break heads if they have to.

Basically that was it.

he made other threats. They are strong.

JUDGE FRIEDMAN: Wait.

No, strike out we made other threats.

What did he say?

THE WITNESS: He said we are strong, you know, don't think you are going to beat us, we will fight as long as necessary.

We have other means, we are going to sue you.

Yes. He did say we are going to sue you.

We are going to sue you and the International, along those lines.

We are going to be sued.

He said we would be sued.

Q Were you sued, incidentally?

A Later on we received an anti trust suit of some sort sometime after that.

Q Which is still pending?

MS. HARPER: No, it's not pending for the record.

The anti trust has been dismissed, and Mr. Colavito -- would not know that -- not dismissed -- you agreed to withdraw it.

MR. ISRAEL: One cause of action.

JUDGE FRIEDMAN: I don't care about it.

I am going to strike the whole business.

Q (By Mr. Israel) You said he discussed vacations with you.

What did he say about vacations?

A He wanted a reduced vacation schedule.

We have an industry vacation et up where a man gets credit for time spent in the industry.

They wan ed to reduce that so the man gets only partial credit for the industry.

He insisted on some form of proposal like his, not what we established over the last number of years where a man gets credit for various shops he works in.

Q Did he indicate to you that the Association would be prepared to make a wage offer which would increase wages?

A He said that either at the September meeting or the -- I think it would be September meeting.

Q Not at this meeting?

A No, not at this meeting.

Q How long did this meeting take?

A An hour, around there.

Q Sitting in the lobby all this time?

A Yes.

Q Did you ask him which were the three companies that were preparing or whatever your terminology was to go?

A Yes.

But he wouldn't tell me.

Q Was this about the time you learned about North Shore or Charla?

A No.

We had not heard on either one I think at that time.

Q How much after this meeting did you learn about North Shore or Charla?

A North Shore, probably a number of weeks later.

Charla, I guess within a few days.

Q Within a few days?

A I think so.

Q Did you learn Charla was intending to go to a different union?

A No.

We heard that they were resigning, that's what I am talking about first.

Q Did you ask him what Teamsters he was referring to, what Teamster Locals he was referring to?

A I asked him, no, I don't think I did.

Q Did you report this conversation to anybody, Mr. Colavito?

A Did I report it to anybody?

Q Yes.

This conversation.

A I reported it to our members, officers and so forth.

Q When you say members, do you mean employee members or business agents and officers, who are you referring to?

A Both.

Q Both.

Did you report this at a general meeting?

A I think I have spoken in general of it, yes.

Q There came a time when you reported this conversation to the National Labor Relations Board?

A I believe so, yes.

Q When was that?

A Later on in the year, I guess.

Sometime later on in the year.

Q Can you fix a time?

A No. It might be towards the end of the year because I don't know when I got involved in some Board matters.

It might have been November. I really don't know.

Q But it certainly wasn't within the next couple of months, is that right?

A No.

Maybe it was the next couple of months but it wasn't immediately thereafter.

Q Did you ever give a deposition concerning this conversation?

A Specifically by itself?

Q Including this conversation?

A I have given statements that included conversation along this line, I believe.

MR. ISRAEL: Your Honor, may I have two minutes, please?

JUDGE FRIEDMAN: We will take five.

(Recess taken.)

JUDGE FRIEDMAN: On the record.

Q (By Mr. Israel) Mr. Colavito, yesterday, Mr. -- or Monday -- Monday, Mr. Blyer, handed me copies of your prior depositions given to the Board, and I note in a deposition of February 25th, 1976, that you make reference to this August meeting with Mr. Spigner.

Would that be the time you first notified the Board of this occurrence?

MR. BLYER: Your Honor, I would object.

We have the documents.

And I think Mr. Colavito has answered the question as best he can.

In all fairness he should be given the document and then asked the question.

There are four affidavits that the gentleman gave in disparate cases over months and months and I think he should not be required to keep guessing when he gave it.

He's given his best answer.

Let him have the affidavits now.

MR. ISRAEL: I am trying to save time.

I will give him the affidavits.

If he doesn't remember, that's fine by me.

MR.BLYER: You have the affidavits, show it to him.

JUDGE FRIEDMAN: Yes.

I agree with General Counsel.

I realize you are trying to do it to save time, Mr. Israel, but I think he has a right to see the affidavit.

Q (By Mr. Israel) Mr. Colavito, when was the next meeting you had with the independent Associations, negotiating meeting?

A I think it was sometime in September.

Q Can you fix the approximate time in September?

A I think it was in the early party of September, I think. I am not sure.

Q Do you recall how this meeting was set up?

A Through the State Mediation.

Q Did you request the meeting from the State Mediation Board?

A I think it was left at the last meeting that the State Mediator would be in touch with all parties.

Q And were the same parties representing both sides present at the next meeting in September?

A There might have an additional employer that showed up.

And if all the others were there I am not so sure.

I am not sure if Balfour was there.

I can't be sure if all were there but I know a new employer showed up.

Q Who was that?

A The employer of Koenig.

Q Mr. Leistner?

A Yes.

Q What was said at that meeting if anything,about wage increases?

A Well, they wouldn't agree to what we had negotiated with independent employers.

However, they caucused and they came back and they said they were going to submit an economic offer, but they will wait until the next meeting.

Q Was there any discussion on fund contributions?

A No.

Q Anything else discussed?

A Various clauses, you know, why they shouldn't have the Allied differences.

Q In other words, that came up again, the Allied contract?

A Well, the differences.

They raised the question of differences.

Q I see.

Did you make any modification in your demands?

A No.

We hadn't modified --

Q Yes or no, did you --

A I am just saying to you we had modified conditions already.

They had not modified their position.

Q Mr. Colavito, did you notify what you said in July -- modified 65 cents per hour the first year?

A No.

Q Did you offer the break down the five percent -- approximately five percent fund increase?

A No.

We had not gone into that discussion.

Q When was the next meeting with the independent?

A It might have been the second meeting or there were two meetings in October.

I am not really sure about that.

But there were two -- at least two more meetings before the end of the year.

Q Incidentally, two more meetings before the end of the year, between that meeting in September and the end of the year?

A Yes.

Q Approximately how many meetings did you have Allied Association between September and December?

A Well, we had the -- we had one meeting in September.

Then we had a second meeting in September.

And then we had a two weeks or approximately, you know, within two weeks there were a few meetings that took place in October with the Allied.

And then there was a meeting on December, and that was it.

Q That's about five meetings in that period of time?

A Well, I said there were some concentrated meetings in a two week period because there was some bargaining taking place.

Q What period was that?

A October.

Q October?

A Early October.

Q Did there come a time in December when the Allied gave you an offer?

A Yes.

We had an offer in December, yes, sir.

Q December 5th?

A Something like that, yes, sir.

Q Was that offer rejected?

A By the union committee, yes.

Q Did there come a time subsequently when that offer was accepted?

A Yes.

It was put to the membership, accpeted by the membership.

Q That was in January?

A January.

Q January 7th?

A Around that, yes.

Q I believe you testified yesterday that -- the fact that that offer was put to the membership was directed by the International?

A It was an imposted vote, yes.

Q I am sorry?

A It was directed by the International.

Q I believe you said that was contrary to prior practice?

A Yes.

MS. HARPER: Your Honor, I am going to object to this again because this is strictly internal matters as to how the vote was conducted.

JUDGE FRIEDMAN: I am inclined this time to go along with you.

I will sustain the objection.

Q (By Mr. Israel) But on January 7th, you had a settlement with the Allied?

A The beginning of January sometime, yes.

Q Between December 5th when this offer was given to you and January 7th, when it was accepted by the membership at a vote, did you have any meetings with the independent Association?

A We had a meeting just right after the Allied accpetance.

Q Before?

A No, there were no meetings.

Q At any of the two additional meetings you said took place with the independent between September and the end of the year, did the independent make any offer to you?

A No, it did not.

Q Never made an offer?

A Never made an offer.

Q Never made a first year offer?

A No.

Q Did they ever state to you they would make a substantial wage offer if you would indicate what your demands were for the second and third year of the three year contract?

A No.

They never said that.

Q Now, on January 7th, you were now settled with the Allied Association, is that correct?

A Yes.

Well, around that period.

I am not sure about the exact date.

Q What was the amount of the wage settlement with the

Allied?

A 35 cents.

Q Second year?

A Same.

Q 35, 35 --

A 35 -- thirty-five.

Q Now, the independents had previously settled for 65 cents the first year?

A That's correct.

Q That's what you had been asking the independent Association for, 65 cents the first year, is that correct?

A Yes.

Q Were there any other differences between the Allied settlement and the settlement you had made with the various independent companies?

A Some minor differences in language.

There was, some things which one, we could not put into place as I said because they dealt with the vacation guarantee, industry-wide thing.

Trustee selection, you know, a couple of things like that.

Q What about the contributions to the funds?

A That was worked out with the Allied, that was on the basis of 21 cents each year covering a couple of funds.

Q What did that come to in percentage, if you know?

A A little over three percent, I guess.

Q That was what you had previously said top limit would be around five percent?

A Yes.

Q It was three someting percent?

A Yes.

I think it was over three percent.

Q Now, with --

A Covering only two funds though.

Q Two funds?

A Yes.

Q Putting aside for the minute the meetings you had starting January 23rd with these five companies, who were -- had been members of the Association, independent Association, putting that aside for the second, between the 7th and the 23rd, did you have any meetings with the independent Association at which time Mr. Spigner was present?

A Yes.

Q When was that?

A I think around the 14th of January, around that.

Q How did that meeting get set up?

A It was set up through State Mediation.

Q Did you request it, independent Association request it, if you know?

A I don't know.

Q Who was present at that meeting?

A I don't believe all the employers, I am not sure -- not so sure Master Iron was present, I am not sure but I know Bay was, Peelle was present.

Q Peelle?

A Peelle Door, yes, Brakewell was present.

Q Would you keep your voice up, please?

A At least three of the employers and Spigner, of course.

It was Doyle from Breakwell, it was Uydess from Bay, it was Peelle from Peelle, and Spigner was present.

There might have been someone else but I am not sure.

Q And what was said at that meeting?

A Well, they discussed the settlement with the Allied.

They wanted again the Allied differences.

They had still not made an offer and we had pointed that out.

We raised the question because they had -- there were rumors in the industry that some shops had signed up with the Teamsters, and we said is this so or not.

And are you here authorized to bargain for all the employers again.

They would not answer us.

I asked it six times.

They would not answer us.

I said well, we will continue negotiation on it -- the opposition was that we are here to bargain for those people who are bound by the -- by authorization, except for the two that we had signed agreements with, and they would not answer us.

Q No response whatsoever?

A They would not answer that question directly.

They said that's something for another forum.

We asked what forum. They wouldn't answer us what forum.

They said that's a matter to be decided in some other forum.

They would not tell us what forum.

Q What else was said, if anything?

A Pretty much that was it.

Q Did you advise the independent Association at that meeting that you were prepared to accept a wage settlement of 35 cents, 35 cents?

A Yes.

Q Did you advise them you were prepared to accept the package as negotiated by the Allied?

A No.

We told them that the first year of the agreement would be the language part would be the same as we negotiated with the independents before the Allied settlement, with the exception of those points that were not pertinent any longer, but we would advise the economic package down to 35 cents.

Q And the funds would be 3 --

A 21 cents.

I don't know if we had the figure up at that time.

It would be the same as Allied.

The figure which would go to each fund.

Q And what was the response of the independent Association?

A They rejected it.

Q You say they rejected it?

A Yes.

Q Did they have a counter proposal?

A Yes, they did.

They said if you would give us the entire Allied contract, we may recommend it to our Association.

Q Who said that?

A The spokesman.

Q What was your response to that?

When you say the spokesman, who are you referring to?

A Actually it wasn't even told us directly.

It was told to the mediator who took it back to us and we rejected it.

Q The mediator said to you the other side wanted to know whether you were prepared to give them the Allied contract plus the Allied settlement, and if so perhaps they would be prepared to recommend it to its membership?

A Yes.

Q What was your response to that?

A No.

Q Did you give a reason?

A That we were negotiating a contract with them, we weren't going to give somebody else's contract to them.

Q And did the mediator also tell you that in view of that position, the Association felt it couldn't go any further with you?

A Well, the meeting ended?

Q How did it end?

A On that basis that we would be called by the mediator.

Q Was there a joint meeting between -- where the two parties were present at the end of that negotiating session?

A Something that continued beyond that, beyond what the mediator told us?

Q I assume you were in two separate rooms?

A No.

It was a joint meeting.

That broke up and the mediator came back to us and said, they said if you would give them the entire Allied contract they would recommend it to their membership.

Q Mr. Colavito, when the mediator came to you and said that you,were you in a different room than the independent Association?

A Yes.

Q And then he left the room?

A Yes.

Q Did he come back any more?

A Yes.

He said there's no sense in going any further today, that's it.

Q And you both went home?

A Yes.

Q There was no joint meeting after that?

A No.

Q So you didn't see the Association after you gave the mediator this message ane he he came --

A We didn't have any discussion with them.

It might have been in the hall but we didn't have any further discussion.

Q Now, your next conversation with any member,then a member or formerly a member of the Association was with Mr. Doyle, is that what you testified?

A My next conversation?

Q Yes.

With anyone.

A Well, Mr. Doyle called me == called the union office and said he wanted to meet with me because he's now chairman of the negotiating committee, and we got a call the same day, I think it was on a Monday, that the State

Mediation said that the -- he got a call from Doyle to set up a meeting.

Q Excuse me, Mr. Doyle called you?

A Called the office.

The message was transmitted to me.

MR. ISRAEL: The I move to strike that, Your Honor.

I thought it was a conversation with Mr. Colavito --

JUDGE FRIEDMAN: All right.

We will strike it.

Q You were informed that Mr. Doyle called?

A Yes.

Q And as a result of that meeting was set up?

A No.

As a result of that I called Mr. Doyle back.

Q Did you speak to him?

A Yes, I did.

Q What day?

A Probably the same day he called me, probably a Monday or Tuesday of that week.

Q Probably a Monday.

Well, the Monday's in January are the 14th with the 19th and 26th.

A I believe it was the 19th.

Q 19th?

A Yes.

Q You spoke to Mr. Doyle?

A Yes.

Q Called him where?

A At his shop.

Q What was said by you and what was said by Mr. Doyle?

A He said he wanted to arrange with me.

He said he had already called the State Mediation to set a meeting and he had called and the meeting was set for Friday of that week.

He wanted to sit down with me and canvass the issue prior to that meeting, would be discussed, at the meeting on Friday, and we arranged an appointment to see on a Wednesday.

Q Just you and Mr. Doyle?

A Yes.

Q You met with him on Wednesday?

A Yes.

Q That would be the 21st?

A Yes.

Q Who was present?

A Just the two of us.

Q Where did you meet?

A In a cafeteria in the Bronx over a cup of coffee.

Q A cafeteria?

A I will give you the name.

Jerome Cafeteria by Yankee Stadium, okay.

Q What was said by you and what was said by Mr. Doyle at this meeting?

A Well, he told me that he is now chairman of the negotiating committee, he wanted to go over some of the Allied -- what was negotiated with the Allied.

He raised some question about == of some concern he felt with his group == question of employers with sons in the shop, a number of issues deal with the contract, and we discussed them.

And that was it.

And we arranged to see each other on Friday.

Q Did you ask Mr. Doyle how he got to be chairman of the negotiating committee?

A He said a number of the employers were withdrawing and other didn't want to bargain ==

Q Didn't want or --

A Some were withdrawing and others wanted to bargain with 455, and Spigner would not head that group, he didn't want to head it, and he was made chairman of those who wanted to negotiate with 455.

Q Did you ask him who had designated him as chairman, which employers?

A He said the negotiating committee -- he became a chairman, he says,I know he had a discussion with Spigner there, and Spigner suggested he become chairman.

Q When you say you know, how do you know?

A Because he told me that.

Q Tell us what --

A I am saying what he's telling me.

That's how I know it.

That Spigner said to Doyle,"Danny.why don't you become chairman," okay.

That's how he became chairman.

He didn't volunteer for it.

Q Did he tell you what employers he was representing?

A No, he didn't.

Q Did you ask him?

A No, I didn't.

Q That was on the 21st?

A Yes.

Q Did you arrange a meeting, agent meeting when you met with him on the 21st?

A That was arranged on the Monday by the State Mediation --

Q Okay.

Did you ask him who would be present on the 2 --

A No.

Q Did he tell you who would be present?

A No.

Q Who was present on the 23rd?

A There was Kaplan from Carlin and I think two people from Naiztat, two of the officers, the Association from Naiztat, I believe.

One is Henry or Herb.

I am not sure of their first names.

Q Has -- had Mr. Kaplan been present at prior negotiating sessions?

A No.

Q The Naiztat people --

A No, they hadn't been present.

Q Was anyone else present?

A Dan Doyle.

Q Aside from Dan Doyle?

A Those four people.

Q Two representing Naiztat, Kaplan representing Kaplan, and Doyle representing Breakwell?

A They were from those companies.

Q From the companies?

A From those companies?

Q From those companies.

And this was with the State Mediator?

A Yes.

Q What was said at that meeting?

A Well, we discussed the revised demands of the union, the 35 cent increase, and the -- those other issues that were included inthe present Allied settlement with the independent employers.

They raised specific issues that they would like to see if we could make some modifications on.

We did.

And we modified the stipulation that had been drawn up for independent employers that were signing up after the Allied, and we -- and which we had given the independent Association.

Q Was there any conversation as to whom this group was representing, if anybody?

A Well, he said that morning Dan Doyle said, that morning Spigner called him and said they are not authorized to bargain for the Association.

Q And what did Mr. Doyle tell you, other than what Mr. Spigner had said?

A That's what he said.

I want to tell -- he called me this morning and that is what happened.

Q Did Mr. Doyle tell you he was the == was there speaking for his company and nobody else?

A No.

Hk just related it, look, I want to == I want you to understand before we start this is what he told me.

Q Did Mr. Kaplan tell you he was speaking for his own and nobody else?

A No.

I think they recognized --

Q I didn't --

A No, they didn't say that.

Q He didn't say that?

A No.

Q Didn't the people from Naiztat tell you they were there speaking for their company and nobody else?

A Dan Doyle carried that message to us in terms of the authorization of that group and the withdrawal of the authorization, so to speak that morning by Spigner to those people.

Q And what was your response?

A My response was as far as we are concerned we believe that this is a continuation of the negotiation of all the employers that are bound by the authorization and we are going to proceed along those lines.

Q What was the response?

A They said you know the position we are in.

We asked the questions of bylaws.

"What are bylaws?"

We said look, we never saw a copy of your bylaws either.

I think they mentioned they would get a copy to us anyway.

Q Did you mention the bylaws?

A No.

They were talking about trying to canvass in their own mind what Spigner had said to them and what Spigner's role was.

Q It's your testimony thar Mr. Doyle did not tell you, "I am here speaking for my company and nobody else."

A No.

He said that the meeting was arranged as we arranged in the cafeteria on Monday.

But I want to tell you this morning our conversation from Spigner, this is what the situation is.

Q Did Mr. Kaplan address himself to this subject at all?

A Well, he said look, we want an agreement, we don't want to go -- do what the other fellows do.

We want an agreement with 455 and let's see if we can work out an agreement.

Q Is it your testimony, Mr. Colavito, that Mr, Kaplan did not say I represent my company here today and nobody else?

A No.

I think we just -- they addressed themselves to the question of the question we raised, as far as we are concerned, you people -- this is a continuation of our discussions with the Association.

Q Are you sure in your own mind they didn't make the statements I just said?

A That's right.

Q Did you on the following day receive a telegram or memorandum from Mr. Spigner concerning this?

A The following day was on a Saturday, I don't know.

We are not open on Saturday.

If he sent a telegram we probably received it.

MR. ISRAEL: May we have this document marked as Respondent's Number 13.

(Whereupon, the above-described document was marked as Respondent Association Exhibit Number 13 for identification.)

Q (By Mr. Israel) Mr. Colavito, I show you a copy of a mailgram dated 1-24, and ask you if you can identify the same?

(Handing document to witness.)

A Yes.

I have seen this.

Q That's a mailgram received in your office?

A Yes.

MR. ISRAEL: I offer the same, Your Honor.

JUDGE FRIEDMAN: All right.

Any objections?

MR. BLYER: I have no objection, Your Honor.

MS. HARPER: Nor I.

JUDGE FRIEDMAN: It's received.

(Whereupon, Respondent Association Exhibit 13 was received in evidence.)

Q Mr. Colavito, did you at anytime after receipt of this mailgram contact Mr. Spigner concerning the contents of it?

A No, I did not.

I may have sent him a leter, I am not so sure.

I may have addressed a letter to it but I can't be sure.

Q Do you have any file here which would indicate whether or not you did send a letter to Mr. Spigner?

A No, I wouldn't have that.

We may have addressed a letter to him.

I am not sure.

Q Do you recall what date this was received?

A It would have to be after the -- in the office.

I twould have to be by Monday, I suppose, if it went out the day afrer the meeting.

Q Monday was the 26th of January.

A Earliest, I guess --

Q When was the next meeting you had with Mr. Doyle or any of the other --

A Well, as I stated before, we worked out an agreement that day, spent all day there, we met -- I say Dan next day, the Saturday.

Q That's the 24th you are talking about?

A Right.

Q Did you see him on the 24th?

A Yes.

Q Who else?

A [illegible]se I see that day, I saw Wortman from Wortman Iron [illegible] I believe, was there.

Q Who was the representative of Wortman?

A Well, the employer of Wortman, I don't remember his name.

His first name is Joe.

I can't remember his last name.

Q All right.

A But he joined.

And then on a Sunday --

Q Let's stick with Saturday.

This is the 24th.

You met with Doyle and Mr. so and so from Wortman?

A Right.

Q Where was this meeting?

A In Doyle's office.

Q Doyle's office?

A Right.

Q Were the gentlemen from Naiztat there?

A No.

Q Was Mr. Kaplan there?

A No.

Q Was Mr. Uydess there?

A No.

Q Was the State Mediator there?

A No.

Q Who arranged this meeting?

A Doyle, because he said somebody else == I think he had some problems, that's what it was.

Before he drove up that night, he says, "look, I want to discuss with you the problems of -- I won't go back to -- back into production and so forth, come on down to the shop tomorrow morning, can you make it tomorrow morning, work that out."

So I went down there and I found Wortman there --

Q You didn't know the gentleman from Wortman was going to be there?

A No.

Q Who was present other than the gentleman from Wortman, Mr. Doyle and yourself at this meeting on the 24th?

A The shop stewards in Doyle's shop were present.

Q Just Doyle shop stewards?

A Yes.

I think the son of this fellow Joe was present, the son.

Q Wortman --

A Yes.

Q Mr. Colavito, at any prior negotiating sessions with the independent Association have shop stewards been present?

A We were on the question not of negotiation of the contract.

We were on the question of how to bring the men back to work.

It was a question who would come back first and I wouldn't know specifically,you know, the make up of an particular shop to say well we can agree to this man coming back first and so forth.

Q You hadn't signed any piece of paper on the 23rd, had you?

A No.

Q Was a piece of paper being prepared for execution on the 24th by Mr. Doyle?

A I think we had prepared the paper on the 24 -- on the 23rd.

Q Was it signed on the 23rd?

A I wasn't signed.

I think the stipulation was prepared on the 23rd on the meeting after it was agreed to.

Q Did you ask Mr. Doyle and the two other companies that were there to sign in one form or another on the 23rd?

A They wanted to discuss first how they would be phased in part of their problem.

Every shop had a six and a half months strike and it wasn't normal for them, and they had some problems.

JUDGE FRIEDMAN: You can't answr the question.

Did anyone sign --

THE WITNESS: No.

That was the reason they didn't want to sign.

Q (By Mr. Israel) When you went to Doyle's plant on the 24th, did you bring up == did you bring a stipulation with you?

A Yes.

Q Did you sign it on the 24th?

A No.

Q Did Wortman sign it on the 24th?

A No, he didn't.

Q All right.

Once again at any negotiating session with the independent Association were shop stewards present?

A At any of the negotations of the Association, no.

Q What happened on the 24th?

A 24th, we had a meeting in the Sheraton Tenney --

Q Satruday?

A Still on Saturday.

Q Yes.

A We discussed the specifics of Breakwell and some of the specifics about the phasing in Wortman.

Q What were these specifics that you spoke about?

A He was concerned about running his breaks and shears and who would be assigned to that work and who could do that work based on seniority provision of the contract.

He was concerned with who would be his key lay out mean who still being out, he was concerned if he lose that man if he wasn't called right away because he was a very valuable man.

If something could be worked out about him.

Joe was concerned about his son coming back before the men.

Those are the questions that we discussed.

Some hard questions dealing with the phasing in.

Q Okay.

That was the 24th?

A That was on the Saturday.

Q When was the next meeting?

A Sunday.

Q The 25th, who was present at the next meeting?

A There were this fellow Joe.

There was Dan Doyle.

Carlin.

The two Naiztats, I believe.

And one of the --the fellow that was on the negotiating committee, the independent Association from Bay, Uydess. Yes.

Q Where was this meeting?

A Sheraton Tenney.

Q This was Sunday?

A Yes.

Q You sure it wasn't on Monday?

A No., Sunday.

Q Who was present on behalf of the union?

A I was present.

I believe Mikey Tessler, who would know the specific condition with the Long Island shop, which was Charlin, in terms of -- I think he was present.

Kenney Mannsmann may have been there.

I don't remember right now.

Q And incidentally, by going back to the 24th again, you said you probably had a stipulation with you.

It was not signed on that day?

A No.

Q Did you ask Joe or Mr. Doyle to sign a stipulation on the 24th?

A Well, they said they would not sign until they all got together again, -- everybody -- until everybody had their individual problems worked out.

Q Did you ask him why they wouldn't sign it since their individual problems had all been worked out?

A They hadn't been.

Q Had the problems of Doyle been worked out?

A Basically I believe so.

Not all of them.

But I would say not all of them, no.

Q Which ones had been worked out?

A Some of the question of seniority, of how to bridge the seniority recall, because he was interested in saving this one man and the question of an operation of a particular machine where he wanted to have a certain man operating a machine rather than go by seniority.

Q What about Wortman's problems, had they been worked out on the 24th?

A I believe we did, yes.

Q Did you ask Wortman to sign on the 24th?

A They said they would sign all together when -- Wortman said look, when they all sign, I will sign.

Q Did you ask him why he took that position?

A There were just sticking together.

You know, that's all it was.

Q Did Wortman tell you he was part of the negotiating committee?

A He didn't say that.

Q Did you ask him if he was part of the negotiating committee?

A I didn't ask him.

Q The 26th --

A I don't know the date.

Q Sunday.

What was discussed --

MR. BLYER: 25th.

Q Excuse me, the 24th, on Sunday, what was discussed at that meeting?

A Bsically they had -- what was discussed with them was how they were going to sign that day.

Are they going to sign as representative of the Association, going to be signed -- how would they sign.

And we pretty much -- they were told they shouldn't sign by --

MR. ISRAEL: Your Honor, I must object.

I would like Mr. Colavito to state what they said, not summarize what they said.

JUDGE FRIEDMAN: All right.

Mr. Colavito, to the best of your knowledge, try to use even the words, if you can remember.

A It's rought because we are on the same subject all the time we are there, an hour or two.

The hang up seems to be --

MR.ISRAEL: Your Honor, I object to what the hang up was.

A Carlin was ready to sign.

MR. ISRAEL: I object, Your Honor.

What did he say, what --

JUDGE FRIEDMAN: Did Carlin say he was ready to sign?

THE WITNESS: Carlin said he was ready to sign.

All right.

He was ready to sign.

And he had touched base, I believe it was Carlin, with the attorney for the Association, I believe,and he said he could sign up as a member of the Association, as an individual.

As a member of the Association, because some were taking the position, they were told by Spigner --

MR. ISRAEL: Your Honor, I must object to someone --

MS. HARPER: This is what he said.

MR. ISRAEL: He didn't say someone taking the position.

We are at a crucial point and I wouldn't like summarization of what anyone was thinking.

MS. HARPER: I understood he was telling what he was advised --

JUDGE FRIEDMAN: Let's not argue.

Is this what Carlin told you?

THE WITNESS: Yes.

Carlin said that he was ready to sign as the Association.

JUDGE FRIEDMAN: Did he say anything further?

THE WITNESS: Yes.

He said that he was advised that he could sign as a member of the Association, and as an individual company.

He said some were in the Association were being told they can't sign as a member of the Association, all right.

But he said the attorney for the Association says he could.

JUDGE FRIEDMAN: He could not?

THE WITNESS: He could.

He could sign as a member of the Association.

And I think they all agreed to do it as that, except --

MR. ISRAEL: Objection, Your Honor as to what they all agreed --

A They agreed --

MR. ISRAEL: Your Honor, I must object.

They are at a very crucial point, and I don't want him to summarize it.

If he can't remember, let him --

MS. HARPER: He can remember, not the same words.

If the witness can remember the identical words obviously he will give it to us.

I assume if he can he will give us his best recollection.

He didn't take a tape; and I think we can stipulate to that.

JUDGE FRIEDMAN: All right.

To the best of your knowledge, what each of them said individually one by one?

THE WITNESS: Joe said, "look, I am ready to sign. For the Association as individual member, I am redy to sign."

Bay says I am ready to sign as individual member.

Carlin was ready to sign as an individual member, as a member of the Association.

The only one who was reluctant to sign as a member of the Association was Dan Doyle.

JUDGE FRIEDMAN: What did he say?

THE WITNESS: He said, "look, I want to spend some more time, let's arrange another meeting."

And we arranged another meeting for the next day.

That was the positions of the various parties who were present that evening.

Q (By Mr. Israel) Did you understand -- did I understand you to say this meeting took about an hour or two?

A Yes.

Q This was the prime subject of the meeting?

A Bay had his own individual, he wanted resolved.

Carlin felt that he could work that out with the Teamsters -- and we were still hanging a little bit with Bay on it.

So basically it was on this question.

Q Now, let me see if I can refresh your memory, Mr.

Colavito.

Didn't the subject come up because you insisted that each of the five sign, "on behalf of the Association"?

A That was our position on the --

Q I don't want your position --

JUDGE FRIEDMAN: Did you not say this to those present?

THE WITNESS: Tbat we wanted you to sign on behalf of the Association?

JUDGE FRIEDMAN: Right.

THE WITNESS: Yes, we did state that.

Q (By Mr. Israel) And did in fact not each and everyone of those people refuse to sign on behalf of the Association?

A Not initially.

Carlin was ready to sign on behalf of the Association because he was in a quandary of the others not wanting to do.

Q What did the other four say about signing on behalf of the Association?

A They suggested checking with the attorney amongst themselves -- in my presence suggest checking with the attorneys for the Association and see if they could do it.

If they could do it, they would do it.

Q Mr. Colavito, did in fact not each of the five tell you they could not sign on behalf of the Association?

A They did not say that, because they weren't sure because what the bylaws stated, and that's why they went back to the -- to call the attorneys for the Association.

Q At that meeting did not Mr. Kaplan say to you, "I am here on my own behalf and I have no authority to bind the Association."

Did he not state that to you?

A Never been his position.

Q Did he or did he not --

A I say it three times before, he did not say that to me.

Q At this meeting did not Mr. Uydess say precisely the same thing to you, he is speaking on behalf of his company and he has no authority and cannot speak for anybody else?

A No, he didn't say that.

Q Did Mr. Doyle not say precisely the same thing?

A No, he did not.

Q Did you not state to these gentlemen that if you can't sign on behalf of the Association, sign as a member of the Association because that's a fact, isn't it?

Was that not your statement?

A Is that my statement?

Q Yes.

A I suggested to them if they couldn't sign one way they could -- they would sign another way, yes.

Q Why did you want them to sign as a member of the

Association?

A Because they were members of the Association and it was our position that they were there dealing with us representing the Association, that they were bound by the Association authorization and so forth.

Q Did you not refuse to sign any contract with any of these companies unless they put words such as, "behalf of the Association," or "as a member of the Association," after their signature?

A Yes, we agreed that we would not -- we agreed that we would not give up our rights and the employees rights on the basis of what they wanted or suggested what the Association was trying to do.

They were illegally withdrawing from the authorization and we were not going to be a party to that.

Q So you refused to sign any contract with them in which they would simply sign their names?

JUDGE FRIEDMAN: As individuals, sign their names?

A No, we would not sign that, no.

Q And you told that to them, did you not?

A I said we would not sign the agreement along those lines, no.

Q Now, was it not Mr. Kaplan who said to you, "Mr. Colavito, or Bill, you want us to sign something after our names because you want to handle it, don't you," didn't he say that to you?

A I don't remember if he said that.

Q You don't remember?

A I don't remember if he said you want to handle.

We had some discussion on the question of the contract, on the question of the authorizations.

A lot of discussion.

He says to handle -- was the most willing of us all --

Q He did say it or you don't recall --

A I don't recall.

Q Did anyone else ask you that question?

A No.

I think they understood.

Q What?

A They understood that Spigner's statement on the day of the negotiation withdrawing the authorization they had to Dan Doyle was a problem for negotiation.

They understood that.

They weren't looking to -- they wanted to bargain the contract with Local 455 and they were set up as a committee to bargain with 455, thelast day of the meeting before we met he was told you have no authorization at all.

Q This is what you --

A That's what he told me, on a Friday, he told me that.

Q Tell you this again on this day?

A It came up.

It was pretty clear to us and we discussed it.

Q How did the subject initially come up on that day?

A Which day?

Q Sunday.

Sunday, of how they should sign, how did it come up?

A It was a continuation --

Q How did it start?

A Who remembers.

We were there for that purpose to process the question of the signing of the agreement.

Q You had stipulation with you?

A Of course.

Q You gave it to one of them or all five --

A We worked it up the night before, on a Friday rather.

Q Did anyone start to sign it?

A I don't remember really if anybody started or not.

Q Did you ask them or tell them before they started to sign this is the way I want you to sign?

A Yes.

Q What did you say?

A I said we would want you to sign, I think I have answered before, we want you to sign in terms of your negotiating committee for the Association, continuation of our bargaining, we shall sign on behalf of the Association.

Q That's when they -- four of the five refused, you say?

A No.

They felt that was a problem right along because of Spigner's withdrawing of their authority.

How we are going to handle our problem, I don't know if we can do that.

Q Prior to this meeting had you ever told them specifically how you wanted them to sign that contract, that stipulation?

A It was discussed on the Friday also.

Q You didn't tell us that.

A I said that.

MR. BLYER: Your Honor, may I make an objection.

Your Honor, there is no dispute here, General Counsel is in full accord with the testimony, takes the position that Spigner deauthorized these individuals, call it what you may --

MR. ISRAEL: I didn't take that position.

MR. BLYER: You introduced into evidence a letter --

JUDGE FRIEDMAN: That's Spigner's.

That's the position of the Association not Spigner's individual Association.

Irving Spigner on behalf of the Association sent a letter to you authorizing --

MR. BLYER: There's no dispute they signed it.

If we look at the stipulation, the name of the gentlemen, as a member of -- that they refused to sign on behalf of, that Mr. Colavito believes they should have to try to get them to do so and they refused, they know --

MR. ISRAEL: I would ask you, Mr. Blyer, do you also not dispute the fact that each one of the five specifically said I speak for my own company and I do not speak for another company?

MS. HARPER: There is no such testimony.

Will you produce it?

MR. ISRAEL: That's what I am asking him about.

MS. HARPER: He has answered it several times saying there was none.

You can't keep repeating question ad nauseam.

MR. BLYER: Even if they did say it, our position doesn't change.

As far as we are concerned --

JUDGE FRIEDMAN: But there maybe a reason why he wants these answeres.

MR.BLYER: I thought we have gotten everything.

Now he's got one final point, let's get to that final point.

MR. ISRAEL: There's been no testimony that the subject of how it was to be signed specifically was discussed on Friday, and the record will show it.

MR. BLYER: Okay.

I don't doubt it.

I think he's answered everything.

If you have something else get to it, that's all.

JUDGE FRIEDMAN: I --

MR. ISRAEL: I have what happened on Friday which he hasn't testified to.

MR. BLYER: If it's going to be a repetition.

Your Honor, I withdraw any objection.

Let him go on.

MR. ISRAEL: You are saying your people told you -- I am not privy to your conversations.

MR. BLYER: Perhaps you are not.

I withdraw any objection I have -- I had --

JUDGE FRIEDMAN: I think we have gotten testimony in regardless of what happened on Friday, on the Sunday meeting they said they were reluctant to sign because of the fact of Spigner's telegram and they didn't really know what to do and that he was insisting that they sign for the purpose of binding the Association.

I think that's his testimony.

I honestly don't --

MR. ISRAEL: I want to go back because he said it was discussed on a prior day.

JUDGE FRIEDMAN: All right.

Q (By Mr. Israel) Was the subject of how they were to sign, specifically sign, discussed on Friday?

A I believe it was.

Q With who?

Which individuals?

A All of them that were present at that Friday meeting.

Q Did you tell them at that time that you wanted them to sign on behalf of the Association?

A Yes.

Q What did they say on Friday?

A They said they had a problem because of Spigner's disauthorization, that's all.

Q Did they tell you they would check it out?

A I believe they did.

Q When you discussed it with him on Sunday, did you ask if they had checked it out?

A I believe their position was the attorney for the Association on Sunday or the Monday, the attorneys position was they could sign as members, but they could not sign as -- on behalf of the Association.

Q That was what they stated to you?

A Yes.

Q Did you ask them at either of the two meetings what they would mean if they signed, "as members of the Association"?

A What they would mean?

Q Yes.

A It wasn't a question what they --

Q Did you ask him the question, Mr. Colavito --

A No.

Q That's --

JUDGE FRIEDMAN: Just answer the questions.

A Sorry.

Q Did anyone sign the stipulation on that Sunday?

A No.

Q That's the 25th?

A Maybe they did.

Maybe Carlin signed, I am not sure. Maybe it was on Monday.

Q When was the next time you saw anyone of these individuals?

A Monday.

Q Which ones did you see on Monday?

A The Uydesses, two of them, from Bay.

I don't think Wortman was present.

Naiztats --

Q Were not present?

A Were present, I am not sure if both of them were there or just one.

I am not sure if Carlin or Doyle were present but there was a meeting about four or five individuals at least.

Q Where was this meeting?

A At the Hotel Grant, the Grant Motel on Long Island

Expressway.

Q What was discussed at that time?

A Pretty much they would agree to sign as members of the Association, and the question of setting up the various appointments with the companies to work out their phasing who had not been worked out already.

Q Wasn't it a fact, Mr. Colavito, at that time you were still insisting they sign on behalf of the Association?

A I don't believe so.

Q Do you have a recollection of that, Mr. Colavito?

A I believe it was worked out at that meeting.

Q Anyone sign on the 26th?

A I would have to look at the stipulation.

Q Do you have any recollection independent of that?

A No.

MR.BLYER: Let me get it from the books.

May I hand it to him?

JUDGE FRIEDMAN: Sure.

(Mr. Blyer handing document to witness.)

JUDGE FRIEDMAN: Are the dates they signed alongside their signatures?

THE WITNESS: In most cases, they are.

JUDGE FRIEDMAN: All right.

THE WITNESS: Yes.

JUDGE FRIEDMAN: If the dates are on the agreement, I don't know --

MR. ISRAEL: They are not.

JUDGE FRIEDMAN: What's the point -- if they are --

MR. ISRAEL: They are not.

One I think we didn't decipher.

Three are not.

JUDGE FRIEDMAN: All right.

THE WITNESS: I don't know if Carlin signed.

Q (By Mr. Israel) Can we start with Brakewell.

Brakewell has next to the 1-28.

Is that when he signed, 1-28?

A Yes.

Q 1-28 was signed -- was when?

A Yes.

Q Was he present at this meeting on Monday?

A He might have been present.

I am not sure.

Q Was he asked to sign on Monday?

A He still had problems in the shop and he wanted to clear them up.

Q Let's take them one by one.

Where did he sign on the 28th?

A His shop.

Q Was anyone else present?

A Partners.

Q Any other employers present?

A No.

Q Signed in your presence?

A Yes.

Q Did he state at that time on the 28th that he was signing only for himself?

A No.

No, he did not, if you want me to answer it that way.

Q Carlin Manufacturing Company has no date next to it.

Do you know when he signed?

A I believe he signed at that meeting on a Monday, I believe.

But I could be wrong.

I don't believe I saw him after that any more.

Q That was Mr. Kaplan who signed?

A Yes.

Q Did he state at that time, "Bill, you understand, I am signing only on my behalf and no one else's behalf"?

A No.

Q No?

A If you want that kind of an answer.

It's a answer that's not really complete.

I can't answer it that way.

Q Go ahead.

A The real problem was, was not the question whether --

MR. ISRAEL: I move to strike.

I don't know --

THE WITNESS: The situation was --

MR. ISRAEL: I move to strike.

JUDGE FRIEDMAN: Did he make any statement when he signed it?

THE WITNESS: He signed an individual membership.

JUDGE FRIEDMAN: Did he make any statement at all?

THE WITNESS: No.

After we got through with the discussion he agreed to sign on that basis.

Q (By Mr. Israel) Naiztat Iron Works doesn't have a date next to it.

Do you recall when he signed?

A He may have signed the same time Carlin signed.

Q That's the Monday meeting?

A It's possible.

I was down at his plant for something so I am not sure if he signed at his plant.

Q Did he make any statement about signing only on his own behalf?

A No, he did not.

Q Now, Larry -- Bay Iron Works, I can't make out the date, whether it's 1-27 or 1-29, do you know what date it was signed?

A It looks like 29th here.

Q Do you have any specific recollection whether it was the 27th or 29th?

A No.

It maybe the 27th because Wortman signed the same day that Brakewell signed so I can't be sure.

Q Did the individual signing for Bay make any statement about who he was signing for when he signed?

A No.

MR. ISRAEL: I have a rather bad copy, Mr. Blyer.

MR.BLYER: Look at his.

MR. ISRAEL: I have a problem with Wortman because Wortman seems to be printed on mine.

MR.BLYER: The Xerox didn't pick it up.

I printed it.

Q (By Mr. Israel) Wortman doesn't have a date next to it.

A I believe he signed the same day as Doyle did.

Q That would be the 28th?

A Yes, I believe he signed the same day.

Q Now, the ones that were signed the same day, were they signed in the presence of each other?

A No.

Q All five individuals --

A Except the first two.

Naiztat and Charla.

Q Now, on my copy all have after the names member of the independent Association.

A Right.

Q Were those specific words -- did you dictate to these gentlemen the specific words you wanted signed after their names?

A Yes.

Q That day or the day that any one of these individuals signed did you tell them you wanted them to sign, "on behalf of the Association"?

A We couldn't get them to sign on that basis so we agreed to do it this way.

Q Did you try on each of those final days to get --

A Again, no.

We had uniform position on everybody.

Q -- sign as a member of the Association?

A Yes.

Q Did you at the time that each one of them signed, the different days, tell each one of the individuals you can sign as a member of the Assoc iation because it's a fact, you are a member of the Association?

A In the course of discussion we said that, of course.

Q In addition to being in the course of the discussion, did you also make the statement on the day each one of them signed?

A Only at the point of view of dictating, you want to use that word, how they should sign, that's all.

Q Okay.

Now, I believe you testified on your direct examination that subsequently in writing or verbally you notified each of the other employers who you considered to be members of the Independent Association that you considered them bound by the terms of that stipulation, is that correct?

A Yes.

Q Was the Peelle Company one of the companies who received that notification from you?

A They receive a notification, yes.

Q Was that a written notification, a verbal notification?

A I think probably both.

Q Pardon?

A Probably both.

MR. ISRAEL: Your Honor, I am just wondering, I am going to have a series of questions dealing with subsequent negotiations.

Would you want me to continue?

You indicated you wanted to break at 12:30 for lunch.

JUDGE FRIEDMAN: We are not going to end up any sooner one way or another so let's continue.

MR. ISRAEL: Okay.

JUDGE FRIEDMAN: Off the record.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

We will recess for lunch.

JUDGE FRIEDMAN: On the record.

MS. HARPER: Your Honor, before we start we have several witnesses.

I would like to move that we change the order of procedure,if we might, to meet a little problem that we have encountered.

We have had several witnesses who were subpoenaed to come yesterday and today.

Some of them have just commenced work after a long strike and been out for a long time and their jobs are very important to them.

And we would ask if we could extend ourselves a little to put them on, to adjourn Mr. Colavito's testimony.

He will remain here if need be and just take them out of order.

I don't see how anyone could be hurt by it and it would ve very, very helpful to these people.

JUDGE FRIEDMAN: Does General Counsel have anything to say about that?

MR. BLYER: I would love to do it if everyone else is agreeable.

MR. ISRAEL: I don't think I can be agreeable.

Yesterday that was frankly my suggestion to accomodate myself and everyone else.

I suggested we take people out of order.

But I think I am within a half hour of finishing with Mr. Colavito, and I would like to finish with Mr. Colavito.

I will be finished with him this afternoon.

JUDGE FRIEDMAN: We came here this morning on the assumption we would be finished here this morning, and that's why they --

MR. ISRAEL: We ended up with an hour and a half of colloquy --

JUDGE FRIEDMAN: I don't think there was any hour and a half of colloquy.

MR. ISRAEL: I think it was much more than you think, Your Honor.

I think it was much more than an hour.

JUDGE FRIEDMAN: It seemed like a thousand years to me.

Ordinarily I wouldn't even continence this sort of motion because I realize that it means -- it's an upset in everybody's approach to the hearing, but I do realize that people have livings to make as well as anything else, and for the accomodation of these people because of the [illegible] difficulty, I assume that Mrs. Harper would have no reason to unduly impose upon anybody anless it would -- it was certainly true that some of these people just obtained jobs and I just don't want to see them lose their jobs and lose a day's pay.

I realize it maybe a bit inconvenient for you, but Mr. Colavito will be able to be back here I am sure tomorrow or maybe later this afternoon, I don't know.

MR. SPIGNER: Do you think Mr. Colavito will not return to the stand today, is that it --

JUDGE FRIEDMAN: How many witnesses do you have?

MR. BLYER: There are eight I think that will be called.

JUDGE FRIEDMAN: I am sure he will not be called to the stand.

MR. SPIGNER: In that case I will absent myself until tomorrow's session.

JUDGE FRIEDMAN: I will grant the motion.

We will take the witnesses out of order.

Mr. Colavito, you will be here at 9:30 tomorrow morning.

(Mr. Colavito temporarily excused.)

JUDGE FRIEDMAN: Will you raise your right hand, sir.

Whereupon,

JUNIUS MELVIN HOWELL

having been called as a witness, and having been first duly sworn by the Judge, was examined and testified as follows:

JUDGE FRIEDMAN: Please be seated.

And would you give your full name and address to the Reporter?

THE WITNESS: Junius Melvin Howell.

DIRECT EXAMINATION

Q (By Ms. Harper) Mr. Howell, in June of 1975, who were you working for?

A G. Zaffino and Sons.

Q Now, when the strike began on July 1st, were you working for the company?

A He laid us off the day before the strike began.

Q When you say he, who is he?

A Browney Zaffino.

Q When you say he laid us off, who is the us?

A The whole, you know, the crew that works there.

Q Besides yourself, who else was laid off at that time, if you can remember?

A Roger Williams, Joe Cassara, Joey Zaffino --

MR. ISRAEL: Could you spell that second name?

THE WITNESS: C-a-s-s-a-r-a.

Well, there was -- three other fellows laid off prior to the, you know, about a month before the strike began.

Q Before you were laid off?

A Yes, that's right.

Q Fine.

How many years had you worked for Zaffino?

A 25 years.

Q And have you been back there since the strike began?

A No, I haven't.

Q I mean as an employee?

A No.

Q Are you a Local 455 member?

A Yes, I am.

Q And how long have you been one?

A Since 1945.

Q Are you a member of any other union, sir?

A No, I am not.

Q Now, do you recall in the middle of January of 1976 receiving a telephone call from the secretary who is employed by Zaffino?

A Yes, I do.

Q And what did she tell you and what did you say to her?

A Well, she said, "Browney was going to have a meeting, and wanted us all to come down -- to the shop and discuss it."

Q Who is Browney Zaffino?

A He's the president of the organization.

Q Okay.

And did you go down to the shop?

A Yes, I did.

Q Do you remember what day of the week this was?

A I think it was Saturday.

Saturday, yes.

Q And the time of the day that meeting was held?

A Nine o'clock.

Q And when you got there, who was there?

A Browney and his brother Angelo, and the foreman, Joe Cassara, Joey, his son, and all the other fellows they started to come in gradually, you know --

Q And how many would you say workers like yourself were there?

A Eight.

Q Who did the talking on behalf of the company?

A Browney.

Q And what did he say to the men and what did you or anyone else say to him?

A Well, he said that Local 455 was, I don't know how to explain it --

Q Just tell us what he said.

JUDGE FRIEDMAN: Just tell us what he said, you don't have to explain it.

A He said pushing him out money wise with the benefits and things like that, so he asked to join another union.

And he suggested 18.

Q Go on.

A Would be cheaper and better for him to operate.

So --

Q What else did he say thatyou can remember?

A He says -- well, he told -- no, that was after.

I am trying to think now.

Oh, he says he wanted to get somebody from 18 to come up and talk to us about it.

So I told him, well, if he can get a contract so we can look it over and discuss it, you know, we would.

So he said well, he would be in touch with us afterwards, you know, about the other local.

Q Did anyone from Local 18 ever come up to the shop?

A No.

He called me, I think it was about, oh, about two weeks later and he asked me if I wanted to take a ride.

I assume where he was going, and I said no, I rather stick with 455.

Q And what did he say?

A Well, he says well, I can't say the ladies in here what he said to me.

MS. HARPER: Go right ahead.

A He said you better watch your ass, we are going to watch ours.

What he meant by that I don't know.

Q Now, at the meeting in the middle of January of '76, did Mr. Browney Zaffino have any literature with him?

A Yes.

He had a thing from 18, you know, paper, explaining all the benefits and stuff like that.

Q How do you know he had that literature?

A He tried to show it to me, the letter, the brochure, it was on his desk.

And he made copies of -- you know, on the copying machine so we could take it to read it.

Q Did you take it?

A No, I didn't.

Q Did you observe any employees take it?

A Yes.

Three or four of them took it.

Q And what do you recall being on that literature?

A Well, hospitalization, the pension and things like that.

Q And were you able, by looking at the literature, to identify where it came from?

A I saw 18 on there.

It was mailed directly from 18.

MR. ZISKIN: Objection.

Move to strike.

JUDGE FRIEDMAN: Yes.

I will leave the part that he saw the 18 on there, but I will strike the rest of it.

MR. BLYER: Thank you very much, Mr. Howell.

I appreciate it.

Don't go.

MS. HARPER: I have no further questions.

MR. ISRAEL: Is there a deposition, Mr. Blyer?

MR. BLYER: Yes.

May the record reflect, Your Honor, I am handing counsel the five page affidavit that Mr. Howell gave to the Board.

JUDGE FRIEDMAN: All right.

Proceed, please, Mr. Israel.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Howell, you were working for Zaffino in January of 1975, were you not?

A '75, yes.

Q Aed approximately how many employees were there of Zaffino at that time?

A In January, the full crew, eight.

Q Eight.

Now, will you tell me once again when the first group of the eight was laid off, if you recall?

A Well, I think it was one fellow got laid off--two got laid off in April.

I think a week later or two weeks later I think two more got laid off.

And it was just the foreman, the son, and the finisher and myself.

I am the shop steward.

Q You were the shop steward?

A Yes.

Q Did you know why the first four were laid off?

A Well, he said it was lack of work, there was no work, you know, coming in and he knew the strike was, you know, coming up, so --

Q In fact did there seem to be less work in the shop?

A No.

It was just normal.

You know, it wasn't that busy, but it was just normal.

Q Were the four workers who were retained after April, were they able to produce the work?

A Well, we worked a little overtime to do it.

Q How much overtime on an average week?

A Maybe a couple of hours a week, three hours a week.

Q Per man?

A Yes.

Q And you were able to produce the work that way?

A Yes, more or less, yes.

Q Now, the remaining four, were they all laid off June 29th?

A Same time.

Q When was the next time after July 1st that you went back to the plant for any reason at all?

A Well, I was around everyday, you know, being the strike was on.

I was around in front of the shop everyday for about a month and a half.

Q Doing some sort of picket duty, something to that effect?

A I didn't carry a sing.

I just stayed in front of the shop, you know.

Q That would bring you to about the middle of August, is that right?

A That's correct.

Q Did you notice any work being produced in the plant in July and August?

A Yes.

They did it themselves, they were working on yard themselves, the four bosses.

Q Is that a family?

A Yes.

Four bosses, yes.

Q Now, after the middle of August, when was the next time you went back to the plant?

A Well, I went away for a couple of weeks and I didn't come back until around -- after Labor Day, and then I went back every morning, stayed two or three hours, you know.

Q Until when?

A Until the end of the year,until the winter started to come in, you know.

Q Did the family continue to work?

A Yes.

Q Anybody else?

A Not that I could see.

Q When you say the four bosses, are these brothers?

A Brothers, yes.

Q Were the four brothers connected with the business before the strike?

A Yes.

Q Did they work before the strike?

A Yes.

Q So in addition --you mentioned eight employee before. Were there eight employees plus the four bosses?

A Plus the four bosses.

Q When the first four employees were laid off did the four brothers continue to work with the four remaining employees?

A That's correct.

Q And then the four == the remaining four were laid off and the four brothers continued to work?

A That's right.

Q Now, I think you said you were called to a meeting or asked to come to a meeting in January?

A In January we had a meeting, you know, in the shop with Browney.

That was the first one.

Then he wanted us to come again, and I refused.

I don't know if the other fellows sent.

Q That was == meeting was the one set up, you say, by Mr. Saffino's secretary?

A That's right.

Q Now, did Mr.Zaffino tell you at that meeting how he had heard of another union?

A Well, it was in the process before we went on strike because he had been talking about it, I mean before the strike started.

Q What did he tell you at that meeting about -- if anything, how he heard about this union?

A Well, he said that mostly all the work was going out of town on account of 455, and you know, that 18 was cheaper, like I said before, to operate with.

Q Did he tell you how he had heard about 18?

A No, he didn't.

Q Now, what did he say about work going out of town?

A He say's its' going to Connecticut, Pennsylvania, because the things are so high in New York.

The labor.

Q Labor, he said labor was too high.

Now, when you were in the plant -- this meeting was in the plant?

A Yes.

Q Did you see anyone else who was working in the plant?

A No.

I was in the office.

I didn't see anybody else.

Q Now, have you been back to the plant since that January meeting?

A I was around in February, March for a while, you know, for a couple of hours.

During the day I go by and just look to see if I see anything, you know, and then I would go back home until I landed a job, you know.

Q What did you observe on those days you went there?

A One day I saw the truck going out with a load of stairs on it, and one of the bosses was driving.

Q One of the four brothers?

A Yes.

Q All right.

A And another time I saw four or five beams on the truck.

Q Who was driving the truck?

A The brother.

Q Did you observe anyone working other than the four--the brothers during that period of time?

A No, I didn't.

Q These were the same four brothers who had worked prior to the strike?

A That's right.

Q Have you been back there recently?

A No.

I haven't in the last couple of months, I haven't been back there.

Q Do you know if anyone is working at the plant other than the brothers?

A Not that I know of.

Q Do you know if the brothers are working at the plant?

A Not now I don't because I am working now.

Q Do you know if this company has signed a union contract with any other union?

A I don't.

Q You ever spoke to a representative of any other union?

A No.

Q You never went down to the offices of any other union?

A No, I haven't.

Q Now, when Mr. Zaffino asked you would you like to take a ride, I think --

A That's right.

Q You assumed where he was going to take you?

A Yes.

Because he had talked to me before about going down, he would take us down.

Q In this conversation he did not tell you where he wanted you to go?

A No.

He just called me up and asked me if I wanted to take a ride.

I assume he was going down there and I found out afterwards.

Q When you assumed he was going to a particular union, you said no, you didn't want to go?

A That's right.

Q Did he ever ask you again to go visit any other union?

A No.

Q When was the last time you heard from Mr. Zaffino?

A I think that was the last time, when he called me up and I refused him.

MR. ISRAEL: I have no further questions.

MR. ZISKIN: I have no questions, Your Honor.

JUDGE FRIEDMAN: All right.

Any redirect?

MR. BLYER: Yes, briefly, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Blyer) After Mr. Zaffino asked you if you wanted to take a ride, what did you say?

A I told him I am going to stick with 455.

Q And then what did he say?

A I think that's when he told me about I better watch -- we are going to watch our ass, you better watch yours.

Q Okay.

Now, you mentioned in response to one of Mr. Israel's questions that before the strike there was some talk by Mr. Browney Zaffino to you about 18?

A Yes.

Q Is that correct?

A Yes.

Q How much before the strike as best you can recall did he speak to you about that subject?

A I think it was about -- I think it was in around the middle of May.

Q What --

A The first week in May, something.

Q What did he say to you at that time?

A Well, he was --

MR. ZISKIN: Objection.

This is beyond -- going beyond the scope of the complaint and it's 10(b), it's beyond the scope of the charge filed.

I object to the question.

MR. BLYER: I think it's relevant background here, Your Honor --

MR. ZISKIN: Ysu are going to background, Mr. Blyer are you going to ask the Judge to make affirmative finding --

MR. BLYER: I think he already indicated he couldn't do so --

MR.ZISKIN: I stated I didn't think he could do so.

MR. BLYER: I think it's relevant background especially to a number of the issues in this case, basically whether, as I pointed out in my opening statement, whether at all times there was a preconceived plan here or at least a desire which was put into effect --

JUDGE FRIEDMAN: All right.

That's enough.

Overruled.

MR. ZISKIN: Your Honor, are you going to treat it just as background?

JUDGE FRIEDMAN: That's right.

I will make no findings on the basis of this.

(By Mr. Blyer) You can tell us.

JUDGE FRIEDMAN: I will make no finding that this particular act was an unfair labor act.

A He was getting --

Q You have to tell us just what was said to you and what -- and you said to him?

A Well, mostly he was talking about losing business to other concerns that, you know, working for a cheaper price.

And he mentioned prices in Connecticut local, Pennsylvania loca, and he'd have to do something in orderfor us to keep working.

Q At that time did he make a reference to Local 18?

A Well, he didn't directly say 18.

He says another local.

He's been trying to let us have our own local period.

He wanted us to vote on it.

But we never came to that --

Q I don't follow you, would you say that again?

A In other words, he wanted us to start like a local of our own, pay into --benefits and things like that.

HE said you could get more insurance stuff like that.

Q You mean in the shop just have among your -- among the employees?

MR. ISRAEL: I move to strike this.

MR. BLYER: I am just clarifying what he said.

MR. ISRAEL: At this point I don't see any relation whatsoever.

MR. BLYER: There may not be but let's finish it.

MR.ISRAEL: At this point I say there's no relationship.

MS. HARPER: So show he was anxious to get rid of 455 and set up another union in the place.

JUDGE FRIEDMAN: I know very few employers who don't want to get rid of their unions.

MS. HARPER: And ask your employees to set up another organization, try to get --

JUDGE FRIEDMAN: He didn't, in this background, he didn't tell him that, he just said you know, would be cheaper if you work --

MS. HARPER: Let's hear what the witness said and if that's all he said I would agree it be stricken.

JUDGE FRIEDMAN: All right.

Q (By Mr. Blyer) You can finish your answer.

My question was, what was he asking you to do?

A Well, what I could really think he was trying --

MR. ISRAEL: Objection, Your Honor.

JUDGE FRIEDMAN: Sustained.

Q What did he say to you?

Repeat it again.

A Well, I don't know how to put it --

Q Put it as you remember what he said, the words he used as close as you can --

A He just said he couldn't cope with this union, it's breaking him, and he says he'd have to get something cheaper for the welfare, you know, to keep us working.

Q And did he mention any other union?

A He didn't at that time, no.

Q Did he mention any other alternative?

A No.

Not at that time.

Q He made reference to your own union, what were you referring to then?

A Well, this he had said long time ago --

MR. ISRAEL: Objection.

A And he brought it up again.

MR. ISRAEL: I said -- objection.

JUDGE FRIEDMAN: He said -- when did he bring it up?

THE WITNESS: Right at the time that -- just before he asked us to go into 18.

JUDGE FRIEDMAN: All right.

I will take it.

Q What did he say?

MR. ISRAEL: Could we fix the time now?

Q What conversation?

Approximately when?

A Before he asked us to -- about 18?

Q When he brought up about going into your own union?

A He's been saying that on and off for a couple of years.

MR. ISRAEL: Objection.

JUDGE FRIEDMAN: Sustained.

Q When was the last time he said it?

JUDGE FRIEDMAN: Strike it.

A Around April.

Q All right.

MR.BLYER: I have nothing further, Your Honor.

JUDGE FRIEDMAN: Anything further?

MR. ISRAEL: Nothing, Your Honor.

MR. ZISKIN: Nothing, Your Honor.

JUDGE FRIEDMAN: I have one question.

In cross examination when you said that you refused to take the ride, but he didn't mention where he was going but you assumed that he was going to 18 and then you said but I found out later.

THE WITNESS: Yes.

JUDGE FRIEDMAN: What did you find out later?

THE WITNESS: I found out he took the fellows I have here with me today --

JUDGE FRIEDMAN: I am going to strike that unless you can tell me -- who told you that he took them to 18?

THE WITNESS: One of the fellow's wife.

MR. ISRAEL: Objection.

JUDGE FRIEDMAN: One of the fellow's wife?

THE WITNESS: Yes.

JUDGE GRIE

JUDGE FRIEDMAN: Strike it.

MR. BLYER: Thank you.

(Witness excused.)

JUDGE FRIEDMAN: Raise your right hand, sir.

Whereupon,

JOSEPH RIESS

having been called as a witness, and having been first duly sworn by the Judge, took the stand and testified as follows:

JUDGE FRIEDMAN: Please be seated.

And give your full name and address to the Reporter.

THE WITNESS: My name is Joseph Riess.

I live at 176 Harding Drive, New Rochelle.

JUDGE FRIEDMAN: Mr. Riess, I notice you have some papers with you.

Would you put them in your pocket or put them aside when you are testifying.

DIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Riess, before the strike began on July 1st of [illegible]5, who were you working for?

A Zaffino and Sons.

Q And at the time the strike began were you working at the company or had you just been laid off?

A I just had been laid off.

Q Approximately how mcuh before?

A I think a month.

It was the 14th of April.

Q Okay.

And since the time that you were laid off on about April 14th of '75, have you worked for the company?

A No.

Q Now, are you a member of 455?

A Yes.

Q And how long have you been a member?

A About 20 years.

Q Are you still a member now?

A Yes.

Q Do you belong to any other union?

A No.

Q Now, do you recall an occasion where you went to a meeting at the shop which Browney Zaffino presided over?

A Yes.

Q Do you recall such a meeting?

A Yes.

Q How was it that you got to this meeting?

A Somebody called me -- my home.

Q Do you know who?

A One time it was his secretary, and there was a time before or after that which I couldn't say because I don't know who called up.

Q This time that the secretary called, what did she tell you?

A She told me I should come down to the shop, Browney has a meeting about 18.

Q Did you go down to the shop?

A Yes.

Q And when you got there who was there?

A Most of the members were there, Browney Zaffino, the son, Jimmy, the brother, and Sal, the brother.

Q How many workers besides yourself was there, approximately?

A I would say about seven.

Q Okay.

Now, as best you can, tell us what Mr. Browney Zaffino said to the men and what if == and what any of the men said to him?

A Well, Browney mentioned that he would join this union, that if I wouldjoin this union, I could establish another pension fund and if I work a couple of months or a couple of years, would have another pension fund for retirement, and that we would get a lot of benefits from it.

Q Did he mention the name of the union?

A Yes.

18.

Q And what else did he say about the meeting -- at the meeting?

A Well, he says he couldn't afford to pay us -- no man is worth that much money, because I would have to close up if he would stay with Local 455.

Q Was there any discussion -- do you remember anything else being said at that meeting?

A Talk back and forth, and -- but I coulnd't say what it was any more, no.

Q Do you remember any discussions over any literature?

A Yes.

His son gave it to me because I asked for it.

Q And what -- did you look at the literature?

A Yes.

I looked at it, yes.

Q By looking at it, could you determine where it was from?

A Yes.

It's 18. I have it here.

Q You have it here?

A Yes.

Q Yes.

I'd like to see it.

(Witness handing document to Mr. Blyer.)

MR. BLYER: Your Honor, may I have this marked as General Counsel's Exhibit Number 44.

(Whereupon, the above-described document was marked as General Counsel's Exhibit 44 for identification.)

Q (By Mr. Blyer) Mr. Riess, I show you what you handed me, what's been marked for identification as General Counsel's Exhibit Number 44.

Who gave you this document?

(Handing.)

A Son, Browney Zaffino.

Q And where did he give it to you?

A In the shop.

Q And did he give this document to anyone else at the shop?

A No.

They only brought one back, he says and he's going to give it to me.

But I suppose to give it back to him but I never did.

Q I see.

Now, was there any discussion among the men about what this -- about this booklet?

A No.

They never -- didn't even know I had it.

Nobody knew I had it.

Q His son gave it to you privately?

A He talked about the welfare and everything what we would get if I would join the 18.

I says, "well, I would like to see something on it."

So he gave it to me.

Q I see.

MR. BLYER: Your Honor, I offer this as G.C. 44.

May we go off the record a second, Your Honor.

JUDGE FRIEDMAN: Yes.

(Discussion off the record.)

JUDGE FRIEDMAN: On the record.

It's received.

(Whereupon, General Counsel's Exhibit 44 was received in evidence.)

MR.BLYER: I have nothing further of this witness.

Thank you very much.

MR. ISRAEL: The usual request, Mr. Blyer.

JUDGE FRIEDMAN: Let the record show that Mr. Blyer is now looking for Mr. Riess' statement; and now handing it to counsel.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Riess, what was the name of Browney Zaffino's son?

A Joseph.

Q You referred to in I believe your testimony a Jimmy, is that the same person?

A No.

Jimmy is one of the brothers.

Q At this meeting that you say you went to it was Joseph or Joey Zaffino gave you the book which is marked

General Counsel's Exhibit Number 44?

A Yes.

Q Now, was -- there are four brothers?

A Yes.

Q Joey Zaffino was a worker in the plant?

A Yes.

Q Was he a member of 455 prior to the strike?

A Yes.

Q How long had he worked in this plant, if you know?

A I know that his record stands in the union for I think nine years, something like that.

Q His record stands in the union,you mean he had been a member of Local 455 for nine years?

A Yes.

Q In those nine years had he worked for this particular company, Zaffino?

A Yes.

Q And it was Joe Zaffino who gave you the 18 book?

A Yes.

Q Do you know where it got it, if you know?

A Yes.

He told me.

Q He told you?

A Yes.

Q What did he say?

A He say he was down there with his father and a couple of guys and he brought it back.

Q Were those couple of guys other workers?

A Yes.

Q 455 members?

A Yes.

Q Now, as I understand, you testified that you had asked Mr. Browney Zaffino to bring down a representative of 18 so you could ask him certain questions?

A Yes.

That was before.

He always talked about it, you know, and I says we like to talk to a representative to see what's what because he didn't know much and he always talked around, you know.

Q So you asked for him to bring down someone from 18?

A Right.

Q Did Mr. Zaffino ever bring down anyone from 18 to the plant?

A No.

Q Did you ever speak to anyone from 18?

A No.

Q How many times did you ask Mr. Zaffino to bring down someone from 18?

A Well, once.

Q What was is response?

A He says he's going to try to get somebody down to the shop, but the last thing I heard they went down.

MR. ISRAEL: I move to strike that, Your Honor.

JUDGE FRIEDMAN: All right.

I will strike the last thing I heard.

Q You never repeated that request of Mr. Zaffino to bring down someone from 18?

A No.

Q Did you ask Joe Zaffino to show you the book?

A He said -- this one here?

Q Yes.

A Well, he said he has some brochures on it.

And I says I'd like to read up on it, you know.

Q Were you the only one who got that book?

A Yes.

Q Did you take it from him privately?

A In the office he gave it to me.

Q Just the two of you there at that time?

A No.

Browney was there and Jimmy, I think.

Q Jimmy is another brother?

A Yes.

Q When you were laid off, were other employees laid off with you?

A Yes.

Q Do you remember employees laid off with you?

A Right, four, right.

Q What reason were you laid off?

A Well, we had no more work.

We finished all the jobs and then the strike was coming up so --

Q How did you know the strike was coming up?

This is April.

A They talked about it, the contract, I mean, the contract came up.

Q But you had run out of work so they laid off four people?

A Yes.

Q Now, as I understand it certain people were retained -- certain people were kept working?

A Right.

Q Four people?

A Yes.

Q Now, in addition to the four people did the four brothers work also?

A Yes.

Q Now, did there come a time when you learned that the other four workers were laid off before the strike?

A Yes.

That's -- I found that out -- I went there sometimes, you know, to the shop and I --

Q Found --

A Asked him if he has more work or so.

Q And what was the answer to that question?

A He said no.

He had to lay everybody off.

Q After July 1st, 1975, after the strike, how many times, if any, did you go back to the plant?

Other than this meeting in the office?

A I would say maybe every two, three months, something like that or sometimes -- I mean I pass by, I go in.

I figure once maybe, twice a month or so.

Q Did you go inside the plant?

A Yes.

Q They let you come inside the plant?

A In the office.

Q They let you come in the office?

A Yes.

Q Were you able to see if anyone was working?

A No.

That you can't see that, because the doors are locked.

Q Do you know if anyone was working in that plant during -- from July 1st, 1975, to December 31st, 1975?

A After the strike?

Q After the strike.

A No, I couldn't say.

Q You don't know?

A No.

Q Did you ever see anyone working after the strike?

A No.

Q You were there once or twice a month?

A Yes.

Q In 1976, how many times did you go back?

A Maybe twice, that's it.

Q Did you go inside?

A In the office.

Q Did you see anyone working once or twice in '76?

A No.

You can't see.

Q Did you see anyone working outside the plant?

A No.

Q Since the strike, July 1st, 1975, up to today, have you ever seen anyone working in that plant?

A You can't see inside, you know, unless -- they wouldn't let you go in so you can't tell.

Q Have you seen anyone working outside the plant?

A No.

Q Have you seen any trucks going in or out of the plant?

A I saw trucks going in unloading steel but that's it.

Q You ever see anything come out?

A No.

MR. ISRAEL: No further questions.

MR. ZISKIN: No questions, Your Honor.

JUDGE FRIEDMAN: Any redirect?

MR. BLYER: Nothing, Your Honor.

JUDGE FRIEDMAN: All right, thank you very much, Mr. Riess, you are excused.

(Witness excused.)

Whereupon

MARIO PLAZA

having been called as a witness, and having been first duly sworn by the Judge, was examined and testified as follows:

JUDGE FRIEDMAN: Please be seated, sir.

And would you give your full name and address to the Reporter out loud?

THE WITNESS: My name is Mario Plaza.

I live at 615 Underhill Avenue, Bronx.

DIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Plaza, who do you work for?

A Trojan Steel.

Q Are you working there now?

A Yes.

Q Did you go out on strike on July 1st, 1975?

A That's right.

Q And how long have you been working for the company?

A Well, about five years.

Q And what is your job there?

A I am a finisher.

Q Are you a 455 member?

A That's right.

Q How long have you been a 455 member?

A 15 years.

Q Do you belong to any other union?

A Carpenter's Union.

That was.

Q Is that all?

A That was quite sometime ago.

That's all.

Q At the time that the strike began, approximately how many production and maintenance employees were employed by the company?

A Nine.

Q And how many went out on strike?

A Seven.

Q The two that did not go out, are there any relation to the employer?

A Yes.

One was his sone.

The other one was his son-in-law.

Q And who is the employer at Trojan?

A The employer is Arnold Feinglass.

Q During the course of the strike have you seen any new employees working for the company?

A They had two replacements during the strike, you mean?

Q Yes.

A Yes, they had two replacements.

Q Approximately when did you see them there at the shop?

A Oh, they were there for about two months.

I imagine it was around September, in September on.

Q Now, during the course of the strike were you there on the picket line?

A Yes.

Most of the time.

Q Now, at the end of August, 1975, do you recall being on the picket line and Mr. Feinglass coming over and talking with you?

A Yes.

Q This would be Arnold Feinglass, the owner?

A Arnold Feinglass, right.

Q Did he have a conversation with you?

A Yes.

He told me to -- the doors were open, that I could go back to work, and I told him, that, you know, I am a union member and as long as he didn't sign the stipulation, I couldn't go back to work.

Q What did he say?

A Well, he said that as long as I am a 455 member I will never go back to work for him.

Q Did he say anything in == did he say anything in reference to the contract?

MR. ZISKIN: Objection.

Your Honor, I think counsel is leading the witness at this point.

I don't see any reason to suggest --

JUDGE FRIEDMAN: That's right.

You haven't shown exhaustion --

Q Do you remember anything else that you -- that he talked about in this conversation?

A On this particular day?

Q Yes.

A Well, after I told him that I was a member of Local 455 and only way I could go back to work if he signed the stipulation or the contract, he says as long as I am a Local 455 member I will never go back to work for him.

Q Did he say anything else?

A Other than that, no, not that I recall.

Q Was there any discussion about signing a contract with 455?

A Well, yes, he said he will never sign the contract with Local 455.

Q Okay.

Now, in late January of 1976, do you recall again having a conversation having a conversation with Mr. Feinglass?

A Yes.

Q Excuse me, where did this conversation take place?

A In front of the shop.

Q And at the time was there anyone else with you?

A Yes.

There was a few picket members, and there was also business -- a business agent, but an executive board member from the Local 455.

We went over to speak to him.

Q What's his name?

A Anthony Buffalino.

Q B-u-f-f-a-l-i-n-o?

A Yes.

Q And who did the talking with Mr. Feinglass?

A Well, we never got a chance to talk to him, because on the 22nd, I believe it was, that they had agreed to go back to work, not to go back to work, but the Association had signed, so on the 23rd we went and we thought that we could, you know, see what he would have to say about the Association signing, and when we would go back to work.

Well, as soon as we open our mouth, he said he was going to call the police, and that as long as we were members of 455 we will never go to work for him.

Q And now when he made this remark where was he?

A He was getting in his truck.

He got in his truck and as he left, as he pulled away, there was about eight or ten members across the street, see, and as he left, he says as long as you are members of 455 you will never work for me.

Q And when he said these words, who was he speaking to?

A He was speaking to all of us in general.

You know, yelling out loud.

Q And besides yourself, were there any other employees of Trojan there at the time?

A Yes, because --

Q Were there or were there not?

A Yes.

Q Approximately how many?

A Oh, about five of them.

Q And did he direct his comments to all of them?

A Yes.

MR.BLYER: Thank you very much, Mr. Plaza.

I have nothing further.

MR. ISRAEL: May I Tave the statement, Mr. Blyer?

MR. BLYER: Yes.

I just want to clarify one other point.

Q (By Mr. Blyer) You said you are now -- you are back working at Trojan?

A About a month.

Q How many men are back?

A Three.

There was two and he just called back one day.

Q And how long ago did Trojan sing with 455, approximately?

A How long ago did he sign?

Q Yes.

A About a month -- I have been back about a month.

Q I see.

MR. BLYER: Thank you very much.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Plaza, as best you know Trojan has signed a contract with 455, has it not?

A That's right.

Q You are still a member of 455?

A That's right.

Q You are working for Trojan?

A Yes.

Q Mr. Feinglass had said previously that as long as you'd been a member of 455 you'd never work for him?

A That's right.

Q That did not turn out to be true, did it?

A No, sir.

Q No member of the Feinglass family or any of their relatives ever asked you to sign or support Local 18, did they?

A No.

Q No one ever threaten you were losing your job or with the plant closed unless you joined 18, did they?

A No.

Q You never joined 18?

A No, sir.

Q The plant is open, is it not?

A That's right.

Q And you are working, are you not?

A Yes.

Q Did Mr.Feinglass tell you he signed a contract with 18?

A No.

Q Did Local 455 ever tell you that Mr.Feinglass had signed a contract with 18?

A I heard from the union that he had signed with 18.

Q Who told you that?

A The members -- you know -- on picket lines.

Q When you said you heard from the union --

A I mean the men in the picket line.

Q Did you ask -- would you identify who told you that? The name of the individual?

A Not that I recall because I always seen so many of them, you know.

This was just --

Q Was this something everyone told you in a group?

A Yes,

In a group, yes.

Q Did you ever check that out with any representative of 455?

A No.

Q Do you know if Mr.Feinglass ever signed with 18?

A No.

Q Do you know that he did not sign with 18?

A I never know that he signed with 18, no.

Q Now, you say there were nine employees of Trojan at the time of the strike, is that correct?

A That's right.

Q In fact weren't two already on lay off?

A Yes.

There was two on lay off.

Q Now, how many people are working now?

A Three.

Q Is Mr. Feinglass, the son, working any more?

A No.

He went away to school, his son.

His son-in-law is there.

Q Still working?

A Still working.

Q Did Mr. Feinglass or did Trojan have a -- forgive my expression, I think it's a shearing machine, a 20 foot shearer machine?

A That's right.

Q Prior to the strike?

A That's right.

Q Do you know if he sold that machine during the strike?

A He just recently sold it.

Q Sold it?

A Right.

Q Was that machine part of a general operation of the business before the strike?

A That's right.

Q Did you ever ask Mr. Feinglass why he sold the machine?

A No.

He said he had to make the shop smaller or something.

Q Did he tell you he was forced to sell the machine because he had no business during the strike and was losing money?

A No, he didn't tell me that.

Q What's a 600 ton Press Brake?

A Power Press, rated at 600 tons.

Q Was that a machine that Mr. Feinglass had before the strike?

A That's right.

Q Does he still have it?

A No.

He sold that also.

Q Were any other items of equipment sold?

A Just those two items.

Q Were those items used on a daily basis in the plant?

A Not really, not the big equipment.

That's big equipment.

And business was slow on that line, you see.

So he has other machines that could do the same type of work.

Q Are these machines used for big jobs?

A Right.

Q In fact Trojan no longer has these jobs?

A I would say business is slow.

Q Business is what?

A That particular business is slow.

Q There are three men working in the plant including yourself?

A Now?

Q Yes, now.

A Yes.

There's three men, and he has his son-in-law coming in also.

So you would say four.

Q Son-in-law is Jim Maisch?

A That's right.

Q Jim Maisch prior to the strike was a 455 member, was he not?

A Sure.

Q I assume Jim Maisch is now a 455 member?

A Yes.

Q The four people working are 455 members?

A Yes.

Q Are you working overtime?

A Yes.

Q Is there 40 hours of work each week?

A Yes, we work 40 hours.

Q Four employees work 40 hours?

A Jim Maisch doesn't work all the time.

He comes and goes.

Q Are there any non 455 people working in the plant right now?

A No.

Q Incidentally, prior to the strike, do you know if any other similar companies to Trojan in the metropolitan New York area had any machines like these two machines?

MR.BLYER: Your Honor, I object to the relevance of the question..

MR. ISRAEL: Your Honor, for some reason the question was asked on direct how many employees were working and how many before and how many now and I want to indicate there is a reason for less employees working now.

JUDGE FRIEDMAN: He's told you already that business is slow.

MS. HARPER: He's not an expert on the area either.

MR. ISRAEL: I don't know that.

JUDGE FRIEDMAN: He said he got rid of the machines because the business was slow in that particular type of work that they used the machines -- for which they needed the machines.

Q (By Mr. Israel) Mr. Plaza, who is John Biggie, B-i-g-g-i-e?

A He's a worker.

He's a mechanic.

Q Trojan employee?

A That's right.

Q Were you present at any time prior to the strike?

A Prior to the strike --

Q Prior to the strike, prior to July 1st?

A Yes.

Was he present or I present?

Q Were you present?

A Yes, I was working.

Q Please, listen to the question.

A Go ahead.

Q Were you present at anytime prior to the strike, that is prior to July 1st, when Mr. Biggie told Mr. Feinglass, Arnold Feinglass, that he shouldn't join -- shouldn't have joined the Association, he simply should have signed the stipulation and everything would have been easier for everybody?

A Was I present?

Q Yes.

A Yes.

Q When did he state that?

A What date?

Q Approximately when?

A Like you say before the strike.

Q Now, would you tell us as best you recall who was present at that time and what Mr. Biggie said?

A Well, I was present, and as a matter of fact all the members of the shop that he was signing with the Association, and that we thought that we were such a small shop that he didn't have to get into something, that he should sign, you know, the stipulation and go back to work.

Q When you say a stipulation, do you mean a stipulation that Trojan would agree to whatever the Allied Association agreed to?

A That's right.

Q And did you tell him that?

A Yes.

Q And what did Mr. Feinglass say?

A Nothing he said about that.

He didn't say anything to us about it.

Q Who was -- who is Mr. John Steinhauser?

A John Steinhauser is our business agent.

Q Business agent for Local 455?

A That's right.

Q Was Mr. Steinhauser ever present during the strike at the Trojan plant?

A Yes.

Q Do you recall Mr. Steinhauser telling, prior to the strike, Mr. Steinhauser telling Mr. Feinglass, you shouldn't have joined this Association, you should have signed the stipulation, everything would have been okay?

A No.

Q You recall Mr. Steinhauser telling it to Mr. Feinglass after the strike?

A No, I don't remember.

Q Do you recall any other representative of the union tell that to Mr. Feinglass either before or after the strike?

A No.

Q How often were you present at the premises during the strike?

A Most of thetime.

Q Starting when?

A Starting July 1st.

Q And ending when?

A When did I start back to work, in May.

Q From July to May on a daily basis you were there?

A About ten months.

Q Now, did you observe the condition of the plant during the period -- that period from July through May, the outside of the plant?

A Yes.

Q Were windows broken at anytime?

A No.

Q No windows were broken?

A No.

Q Did you notice any tires of any of the Feinglass vehicles having been cut?

MS. HARPER: Objection, unless this is connected in someway with 455, I don't see it's relevant.

MR. ISRAEL: You can't connect it until you ask if he saw it.

MS. HARPER: I think he would have to say did you see 455 do anything in connection with the windows.

They could have been broken by vandals.

JUDGE FRIEDMAN: Overruled.

Go ahead.

MR. ISRAEL: Would you read the question back, please?

(Record read.)

A No, sir.

Q How often was Mr. Steinhauser down at the plant?

A Not too often.

He would come and go.

Q Did you ever see Mr. Steinhauser in a vehicle following a vehicle driven by any of the Feinglasses?

A No.

Q Did you ever see Mr. Steinhauser follow any of the Feinglasses with a baseball bat?

A No.

Q How many pickets would you say were at the plant on a daily basis up to September?

A About eight or ten.

Q What did the pickets do everyday?

A Well, we mainly stand across the street from the plant.

We had a little shack built there, you know, it was cold, wintertime.

Q Were the pickets all employees, former employees or employees of Trojan?

A At everytime?

Q Yes.

A No, not everytime.

Q Were there pickets from other plants?

A Yes.

In that area there's a lot of shops belonging to 455.

Q In September, the month of September, were there ever more than ten pickets?

A I wouldn't know for sure.

Q Would you say in the month of September the number of pickets increased to about 25 or 30 on a daily basis?

A There might have been at one time.

I don't know.

But not on a daily basis.

Q Do you recall specific instances when 25 or 30 appeared?

A No.

Q When you say there might have been, what did you mean by that?

A As I say, that the area has a lot of shops that belong to, you know, the Iron Workers, and they are close by, let's say, one corner to the other.

So there could have been that one time when maybe we had an area committee meeting, we might have had more than eight or ten.

We might have had 25.

Q Did you ever hear any of the pickets of Mr. Steinhauser use threatening language to any of the Feinglasses?

A No.

Q Did you ever hear them use threatening language to Mr. Jim Maisch?

A No.

Q Did you ever see any of the pickets of Mr. Steinhauser strike either Mr. Maisch or Mr. Feinglass, any of the Feinglasses?

A No.

Q Did you ever hear the pickets of Mr. Steinhauser curse Mr. Maisch or any of the Feinglasses?

A No, sir.

Q Was there police protection at the -- at this plant during the course of the strike?

A Yes, there was -- there was a police station, you know, there most of the time.

Q How many--

MS. HARPER: I didn't hear the answer.

A Was there a policeman there at anytime, I said yes, that we had police station there.

Q How many police were stationed there?

A Two sometimes,sometimes just one.

Q Was this throughout the entire day that they were stationed there?

A What do you mean, eight hours?

Q Yes.

A I used to leave early sometimes so I don't know.

They used to stay and I used to leave, so you'd say they were there about eight hours.

Q On a daily basis?

A Not during the whole course of the strike.

Q Starting when?

A I don't recall.

It wasn't everyday they were there.

Q Did the police start to come during the summer of '75?

A In the summer, yes.

Q Did there come a time when television reporters came down to Trojan?

A Yes.

Q How many times did television reporters come down to Trojan?

A How many what?

Q Times did television reporters come down to Trojan?

A I believe twice.

Q Two different occasions?

A Two different occasions.

Q Do you recall the first instance they came?

A Yes, I recall the first instance.

Q Would it be fair to state there were approximately 100 pickets there at that time?

A I don't know.

I don't think that many.

Q How many do you think?

A Maybe about 75 or something like that.

Q I will accept that.

How many pickets would you say there -- were there the second time?

Another 100, another 75?

A Something like that, I guess.

Q Now, do you know where these pickets came from on two occasions?

A From the area.

Like I say there's a lot of shops.

Q Had anyone made arrangements to use your number, the 75 pickets to come to Trojan on those particular days?

A You mean for the television?

Q For whatever reason.

A For when the television, you know, word got out to the members, and I guess they would want to get in on the television and so they would come down, you know.

Also they were members from the other shops that don't even belong to 455, they would, you know, mill around.

Q How many pickets would you say were there at the time the television crewmen came down?

A About 75, I would say.

Q They were there already?

A No.

They weren't there.

When they first came down, then the men came around, I mean -- they weren't there before the television men came.

Q How many were there before the television men came?

A About eight or ten.

Q What caused the television men to come down, if you know?

A I think Mr.Feinglass called them for an interview or something, because they first interviewed Arnold first.

Q And you think he called and they just came down?

A I don't know.

I guess so.

I imagine so.

MR. ISRAEL: I move to strike his guess, Your Honor.

JUDGE FRIEDMAN: I move to strike the question and the answer.

Not I move, I do strike the question and the answer.

Q Did you personally ever threaten -- withdrawn.

On September 30th, 1975, did you personally threaten Mr. Arnold Feinglass with physical harm?

A I never threatened Arnold Feinglass at all.

Q Did you ever threaten his son, Stewart Feinglass?

A No, sir.

Q Now, calling your attention to October, if you recall that day, do you recall if Mr. John Steinhauser was present at the plant on October 1st?

A I don't recall.

Q Was Mr. John Steinhauser present the day after the NBC television crewmen came down, the next day?

A The next day?

Q Yes.

A I don't recall.

Q Who is Mr. Tony Buffalino?

A Business agent.

Q Of 455?

A Yes.

Q Was he present on October 1st?

A I dont remember.

You know, I can't tell exactly -- the exact date.

I don't remember exact dates.

Q Now, did you ever say to Mr. Arnold Feinglass, your life is not worth a plunk nickle, we will get you?

A No, I neversaid anything like that to him.

Q Did Mr. Steinhauser state that at anytime in your presence?

A No.

q Did Mr. Buffalino state that in your presence?

A No.

Q Did you at anytime ever see a group of pickets attack Stewart Feinglass?

A No, sir.

Q Now, in the month of October, how often would you say the police were there in that month?

A I guess everyday.

Q Were they there everyday as long as you were there?

A There were times they weren't there.

Q How often --

A I don't know how often they were.

Q How often were you there in October, everyday?

A In October?

Q Yes.

A Not everyday, no.

Q Were the police there on most days that you were there?

A Yes.

Q What time did you normally arrive and what time did you normally leave?

A Say I arrive around ten, and I would leave around two or three o'clock.

Q And would the police normally be there from ten to two?

A Right.

Q Were you ever at the plant at a time that the Feinglasses were leaving the plant for the day?

A   Yes.

There was occasions where I see them leave.

Q   Was it a fact that the police vehicles escorted the Feinglasses vehicles away from the premises?

MR. BLYER: Your Honor, I'd like to object to these questions about the police.

The fact that police were there or escorting has no significance one way or the other.

There are many explanations for it and at this point I think it's irrelevant, and I object to any further questioning about whether police were there or whether they are escorting them.

MR. ISRAEL: I don't think it's irrelevant.

JUDGE FRIEDMAN: Overruled.

Go ahead.

MR. ISRAEL: Read back the question, please.

(Record read.)

A   Well, my answer would be to that would be that when Arnold Feinglass left, they would leave too.

Whether they were following him, I don't know.

Q   Now, do you recall a day in October when the Feinglasses had someone come down and attempt to fix a door which had been damaged?

A   No, I don't recall.

Q   Do you recall a day in October when a repairman came down to fix a fence?

A We don't have a fence there.

Q You don't recall fixing a fence which you say wasn't there --

A We don't have a fence, just doors.

Q Do you recall the door having being repaired?

A I noticed that the door was repaired but I don't remember when they did it.

Q Did you see the door before the repair?

A No.

You mean if I noticed the door before the repair?

Q Yes.

A There was a door there, yes,

Q Did it require some sort of repair?

A It didn't.

Q You say you saw the door after the repair --

A I seen they put another door in front of it.

Q Didn't you notice the first door had been broken?

A No, sir.

Q You did not notice it.

Do you recall an occason in October when a number of pickets attacked Mr. Arnold Feinglass using a sledge hammer and a chair?

A No, sir.

Q Now, how many pickets would you say were at the plant in the month of October on a daily basis?

A About eight or ten, I guess.

Q Once again other than the two particular occasions when the television camera came down, where there occasions when there were 35 to 40 pickets there?

A No.

Not other than the time when the -- we had -- might have had an area meeting for general information.

Q Do you recall an occasion when Mr. John Steinhauser was taken to the 14th Precinct Station?

A Was I present --

Q Do you recall an occasion?

A I heard of it, yes.

Q You weren't present?

A No.

Q Did you witness an occasion in October in which a rock was thrown from a moving vehicle, which Mr. Steinhauser was in, through the windshield of Mr. Arnold -- Stewart Feinglass' car?

A I don't recall.

Q You heard about that?

A I heard about it, right.

Q Mr. -- sorry.

A I wasn't there.

I mean I only heard about it.

Q You know that Mr. Steinhauser was arrested for that, don't you?

A Yes.

Q You know he was convicted for that, don't you?

MS. HARPER: Objection.

JUDGE FRIEDMAN: Conviction I won't take.

MS. HARPER: That's not the way to get it in.

JUDGE FRIEDMAN: Whether he knows it or doesn't know it.

Did you see him get arrested?

THE WITNESS: No.

Q (By Mr. Israel) Did you ever follow any of the Feinglasses vehicles in Ossining, New York?

A No, sir.

Q Ever been to Ossining?

A Oh, yes, I have been there.

Q Did the pickets on any occasion -- were the pickets on any occasion forced away from the driveways or the doors to the Feinglass building by the police?

A No.

Not -- when I was there, not that I recall.

Q When --

A We were mainly across the street.

Q Did you see during the entire strike any damage whatsoever to the Trojan building?

A No, sir.

Q Did you see any markings or writings on the Trojan building?

A I seen maybe on strike or something like that.

Q Did you see any damage during the entire strike to the Trojan doors or windows?

A No, sir.

Q Did you see any damage during the entire strike to the Trojan vehicles?

A No, sir.

Q Did you see any damage during the entire strike to any property of the Feinglass family?

A No, sir.

Q Did you hear any threats to any of the Feinglasses made by any of the pickets or agents of Local #55?

A No.

MS. HARPER: Any agents of 455?

MR. ISRAEL: Business agents.

MS. HARPER: He's already answered it.

MR. ISRAEL: I have no further questions.

MR. ZISKIN: I have no questions, Your Honor.

MR.BLYER: I have nothing, Your Honor.

JUDGE FRIEDMAN: All right.

Thank you, sir, you are excused.

(Witness excused.)

JUDGE FRIEDMAN: Five minute recess.

JUDGE FRIEDMAN: Back on the record.

Whereupon,

ARTURO PALAZZO

having been called as a witness, and having been first duly sworn by the Judge, was examined and testified as follows:

JUDGE FRIEDMAN: Be seated.

And would you give your full name and address to the Reporter out loud, please.

THE WITNESS: My name is Palazzo, P-a-l-a-z-z-o, and my address is -- my first name is Arturo,

My address is 86 Thayer Street.

DIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Palazzo, before July 1st of 1975, where were you working?

A I working with Paxton.

Q What was your job there?

A Mechanic.

MR. ISRAEL: Excuse me, you are going to have to go a little bit slower and a little louder.

Q Will you tell us what was your job, again?

A My job is mechanic.

Q And before the strike began how long did you work for Paxton?

A I work four months before strike.

Q When the strike began did you go out on strike?

A Yes.

I still in the street anyhow.

Q When you went out on strike how many other men were working in the shop?

A They working three men in the shop.

Q Those three men, does that include you?

A Yes.

Includes me, right.

Q And are those men also out, the other two?

A Yes, it's out.

Q How long have you been a member of Local 455?

A Three and a half.

Q And are you --

MR. ISRAEL: Excuse me, -- years?

THE WITNESS: Yes.

Three and a half.

Q (By Mr. Blyer Are you still a member?

A Still a member.

Q Do you belong to any other union?

A Yes.

Q What union?

A I belong now to 137, Sheet Metal.

Q Is that the union that represents the employees in your new place of work?

A Yes, the job I got now.

Q Now, on January 22nd, 1976, do you remember going to the Paxton shop?

A In January, yes.

Q And when you went there, did you go by yourself or with other people?

A No, just I was by myself.

I pass through there.

I see it's close, close the shop.

I tried to knock at the door.

I saw him come and --

MS. HARPER: You are going too fast.

Q Let me --

JUDGE FRIEDMAN: Just answer the questions.

Don't offer any testimony.

Just answer the question.

Q (By Mr. Blyer) When you knocked on the dorr, did anyone answer?

A When I knock on the door, yes,the boss come.

Q What's the boss' name?

A Lou.

Q After he opened the door, what did he tell you?

Did he invite you inside?

A Yes.

He say come in.

Q And where did you go?

A He come in by the bench over there, the first bench he got from the door.

Q When you spoke to him did you speak privately or could anyone else hear your conversation?

A No.

Everybody else inside there, one man was working

Q Talk slow.

A And, you know, couple of guys in the office.

Q Did they hear what you and Mr. Mayer were speaking about -- did the other man ==other men in the shop hear what you and Mr. Mayer were talking about?

MR.ZISKIN: Objection.

JUDGE FRIEDMAN: Sustained.

A No.

JUDGE FRIEDMAN: I have to sustain that objection.

Q Where in the --

JUDGE FRIEDMAN: I will have to sustain and strike the question and the answer.

Q (By Mr. Blyer) Did you have a conversation with Mr. Mayer?

A Yes.

Q What did he say to you and what did you say to him?

A He said to me, you looking for job.

He -- I said yes, I looking for job.

He says if you want, come in and I will give job to you, but --

Q Would you start again from the beginning?

A Right.

Q Try to remember --

A He say to me, the bosses say to me, you looking for job.

I says yes, I looking for job.

I want the job.

He say if you want come in I have a job to give it to you, to work, I say, you have the same union, I mean, you got to work with the same union.

He says no, I never sign with the same union.

I have a union.

I say where?

He say I have it over there in the blackboard -- paper he show me, 18, this is the union I want.

So after coming in, I give you a job, after the one month, you have to belong to the -- to the other union.

That's what he tell me.

Q What did you say to him?

A Leo, I got to think about. I can't say right away.

Q Was that the end of your conversation?

A That's all. A few words.

Q And then what did you do?

A And then he said all right, if you decide, you know, you let me know.

Q Did you ever call him about the job?

A I no never call.

I don't answer any more.

MR. BLYER: Thank you very much, Mr. Palazzo, I have nothing further but wait, someone else may have some questions.

MR. ISRAEL: Statements, Mr. Blyer?

MR. BLYER: Yes.

Two pages.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Palazzo, do you remember the exact day in January that you went down to the Paxton plant?

A Yes.

Q What date was that?

A The day is the 22nd.

Q Now, no one asked you to come down, is that correct?

A No.

Q You decided yourself that day to go down to the plant?

A Yes.

I decided myself, just to make a ride because I don't live too far, you know, from the shop.

So I say let's go down because before I was there for the picket line, and then I don't see any more picket line, so I decided some days I go through there.

I saw the shop is closed, you know.

Maybe it's closed no work, you know.

I want to make sure.

I knock on the door and I see somebody in,you know --

Q I think I understand but I am not sure.

At the beginning of the strike you had been on a picket line?

A Yes.

Q Were you on a picket line everyday?

A Yes. Almost.

Q Was anyone working in the plant when you were on picket line?

A Yes.

They work everyday in the shop.

Q Who was working?

A I saw him, another guy --

Q Who is him, when you say you saw him?

A Him, the boss, I mean.

Q Leo?

A Yes.

Q Who else did you see working?

A Another guy, maybe his boss, I dont know, partner, I think.

Q Partner?

A Yes.

Q Anybody else?

A Another guy is working in the office, sometimes, you know, he give a hand to the shop.

Q Who was this guy who worked in the office?

Did he work there before the strike?

A Before the strike, yes.

Q And he worked there after the strike in the office?

A Yes.

He is still working there.

Q Now, how often -- withdrawn.

Did you go down to the plant everyday as a picket?

A This picket line,yes.

Q I think you said that at -- there came a time when the plant seemed to be closed, is that right?

A No.

Is open everyday, the shop anyhow.

Q Did there come a time when you didn't go down there everyday?

A Sometime.

Sometime I go somewhere, no open the shop.

Q Are those days the places would be closed?

A Yes.

Q Now, at the end of 1975, in November and December, did you go to the plant everyday?

A No, not everyday.

Q How often did you go?

A Because I go once in a while, you know.

Q Once in a while is how often?

A Maybe -- I don't know, maybe I go once a week, you know, like that.

Q When you went once a week, were there other pickets there?

A Yes.

Somebody was there.

Q Was anyone working in the plant that you could see?

A Yes.

All the time I saw guys working there.

Q Now, then you went to the plant on January 22nd?

A Yes.

Q Would you tell me again slowly why you went to the office on January 22nd?

A Me?

Q Yes, you.

A I pass through the street, I saw the shop is closed, you know.

And then I decided, I hear so nice inside, must be inside somebody.

I knock at the door and Leo come to open the door.

I say, "oh, that's you." Yes.

He say, "you look for job"?

I say, "yes, I look for job."

He say, "I can give you no job, I know have job --" He say come in, you know.

I come in and talking about -- say what with the union or without the union. He say yes, I have a union, you know -- not the same union, 455, I have another union.

So if you come into, I give you a job after one month you have to join this union.

That's what he told me.

Q He said that he has -- he had signed with another union?

A He say you got to join with other union.

Q Did he say he had already signed a contract with another nnion?

A Yes. Yes.

Q And he siad to you that if you wanted to work in the plant you had to join the other union?

A Right.

Q And then -- he said -- something you said about you wait a few months, is that what you said --

A After one month.

Q After one month?

A Yes.

Q You wouldhave to join the other union?

A Yes, 18.

Q 18.

And you told him you'd think about it?

A Aed then -- I say I got to think about it.

Then he say how long you working with this union, I say three year, three and a half.

He say you don't have to lose too much.

So you don't mind. I give you job, just you belong with the other union.

So you have the benefits,you have the samething.

But Leo, I got to think about this question.

Q And then you left?

A And then I left, you know. I say goodnight and left.

I no talk any more with him.

Q You never called him back?

A No.

Q And he never called you?

A No.

Q And you never went back to the office to talk to him about this?

A No.

I have been -- I no -- I went to the picket line again, outside but I never talked to him again.

Q Now, is Leo, Mr. Leo Mayer, that's his name?

A Yes. I forget another thing, you know.

Q Please --

JUDGE FRIEDMAN: Anshwer the question.

Q Mr. Leo Mayer, is that his name?

A Yes.

Q Do you know a Mr. John Bell?

A John?

Q Bell?

A John Bell?

Q Bell.

A I don't remember. John Bell?
I really don't remember.

Q Did business agent or offices of the union ever come down to this plant during the strike?

A John, yes, the fat guy, yes.
He come over there in the picket line.
You know, I remember now, yes.

Q You remember a John coming down?

A Yes.

Q You don't know if his second name was Bell?

A Right.

Q You think it's Bell?

MR. BLYER: Excuse me, Your Honor, based on his description it's not John Bell.
John Bell is not a fat guy.

JUDGE FRIEDMAN: That's not evidence.

Go ahead.

Q (By Mr. Israel) During the strike you have been down to the plant picketing many, many times?

A Yes, Picket.

Q Have you seen while you were down there, did you observe any damage to the plant of the owner?

A No.

Q Did you see any -- see if any locks were broken?

A Oh, one time, I -- he say they have trouble with the lock, can't open the lock.

Q Who said that?

A Leo, the boss, say they had trouble with the lock, no can open, somebody put sand in the lock, a joke.

I don't know.

Because when I go for the picket line, I go about 9, 9:30, you know, like that.

And then 2, 2:30 I left.

Q You left?

A Yes.

Q You never did anything to the locks, did you?

A No.

Q Did you ever do anything to the doors at this plant?

A No.

Q Did you ever seen a wooden bars nailed to the overhead hanging doors of the plant?

A No.

Q You did not see that?

A No.

Q This man, Mr. Bell -- I am sorry, withdrawn.

This man John --

A John, right.

Q Did you ever see him at the plant?

A Yes, he come around.

Q Does he work for Paxton?

A No.

The business agent, John.

Q Did you ever see him throw rocks at any of the windows?

A No.

Q Did you ever see him throw rocks at anyone working on the roof?

A No.

Q Did you ever see him spread any dog manure on the doors?

A No.

Q Didn't you see any of these things?

A Everything is quiet.

I don't see any trouble.

Q Have you seen the police at the plant?

A Yes, police, yes.

Q How often?

A Police now special now less time they come veryday, with him, the open the door with the police.

I don't know why.

Everybody quiet.

Q I understood everything except the first sentence, did you say something about special?

A Specially when they strike was over,you know, he don't want to sign the contract, so when I go down to the picket line I saw him with the police.

Q Who is him?

A The boss, Leo.

Q Leo?

A Right.

Q And you say when the strike was over --

A When the strike was over.

Q What are you talking about?

When was that?

A It's about when it's over -- February, it was over, the strike.

Q February?

A Yes.

Q You mean --

A I think he scared, you know -- he is coming with the police.

Q How often did he come with the police?

A How often, most every day.

Especially one same thing to deliver -- when he had something to deliver specially he called the police, the police come --

Q Did you say something after that?

A Yes.

I saw myself, he deliver stuff on site, workers deliver stuff on site, he call the police.

Q And they are there?

A Yes.

The police come.

Q Were the police there everyday?

A Yes.

Unless when he go there, I saw the police everyday.

Q When you left were they still there?

A No.

They spend ten minutes, quarter.

Q How many police?

A Two cops.

Q When was the last time you went down to the plant to picket?

A The last time?

Q Yes.

A I don't remember.

JUDGE FRIEDMAN: If you remember?

A I think it's three months later.

Q Three months ago?

A Three months ago.

Q Police were still coming at that time?

A Yes.

MR. ISRAEL: I have no further questions.

MR. ZISKIN: No questions, Your Honor.

MR. BLYER: I have nothing, Your Honor.

JUDGE FRIEDMAN: Thank you, sir.

You are excused.

(Witness excused.)

JUDGE FRIEDMAN: Raise your right had, sir.

Whereupon,

JOSEPH MATZELL

having been called as a witness, and having been first duly sworn by the Judge, was examined and testified as follows:

JUDGE FRIEDMAN: Be seated, sir.

Would you please give your name and address to the Reporter out loud so everyone can hear.

THE WITNESS: Joseph Matzell, 8837 82nd Avenue, Glendale.

DIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Matzell, before the strike began who were -- who did you work for?

A Greenpoint Irong Works.

Q And at Greenpoint what was your job?

A Mechanic.

Q And how long had you worked there before the strike?

A Since '73, April 30th.

Q And how many men worked in that shop at the time of the strike?

A Four.

Q And when the strike began, did all of you go out on strike?

A Yes.

Q And are you all still out on strike?

A Yes.

Q Now, are you a Local 455 member?

A Yes.

Q And how long have you been a Local 455 member?

A 23 years, since 1952.

Q Now, from time to time did you go down to the shop?

A Yes.

Q Now, in around -- on around Labor Day of 1975, do you remember having a conversation with Mr. George Geuther?

A Yes.

Q Who is Mr. George Geuther?

A My boss.

Q And where did this conversation take place?

A In his office.

Q And --

MR. ISRAEL: Excuse me, Your Honor, there are two Mr. George Geuther --

THE WITNESS: Senior and Junior.

Junior.

MR. ISRAEL: Can we identify which one we are talking about?

THE WITNESS: Junior, because he was the boss.

Q (By Mr. Blyer) Now, where was the conversation?

A In his office.

Q And who else was there, if anybody?

A Stanley and Sol.

Q And Stanley and Sal, who are they?

A Sal was my foreman and Stanley was one of our workers.

Q Now, tell me what George said to the three of you and what if anything you said to him, slowly?

A He said that he had a contract there, he wanted us to go out on the union, he said I want to sign a new union.

Q Slow.

A He said we should all go out and joing 18.

And then he showed us here a contract there and another paper.

He says all we have to do is sign the papers and then we belong to 18.

And then he says look over the contract, if you want to look into it, what the contract says, whatever they have in there.

Then I says no, I didn't want to look into the contract.

I says thank you, I belong to a union.

Q Okay.

Try to talk a little slower.

What else, if anything, was said during this meeting by Mr. Geuther to the men?

A Well, he asked us, he says why don't you go out, he says what would you lose, what are you afraid to lose.

HE says you get the same thing over there.

He says are you afraid that you lose your pension.

HE says the pension is transferable.

Q Anything else that you can remember he talked about?

A That was all said about that time there.

All we said he can't go out, we don't out -- he always said, our pension fund is bankrupt, the welfare fund is bankrupt.

I says we stick it out to the end when the union goes bankrupt and then we go out.

Q Now, can you remember anything else that he talked about at this meeting around Labor Day of 1975?

A No.

Q Do you remember any discussion about your jobs?

A No.

Q Do you remember him saying anything about whether or not you would have a job?

MR. ISRAEL: Objection, Your Honor.

He is leading the witness.

The witness says he recalls nothing else being discussed and now Mr. Blyer is leading into specific subjects.

MR. BLYER: I am trying to refresh his recollection.

MR. ISRAEL: By stating what he said.

MS. HARPER: It's not leading not in my book.

JUDGE FRIEDMAN: It's leading, but it comes to a point where he can lead.

Do you remember anything else that was said at that meeting?

THE WITNESS: No.

I don't think so.

MR. BLYER: I don't think he heard my last question.

Q (By Mr. Blyer) Do you remember anything that Mr. Geuther said about whether or not you would have a job with him?

A Yes.

He says if he won't go out to 18 we wont' have no more job.

He would not sign with 455.

Q Did any of yousay anything to that?

A No.

I says we are not going out.

We don't go out.

Q Now, about two months later, on about November 1st of 1975, to you remember getting something in the mail from Greenpoint?

A Yes.

I received a registered letter from the boss.

Q Okay.

A And the letter said --

Q Don't tell me.

JUDGE FRIEDMAN: What date was this?

MR. BLYER: I said on or about November 1st.

Would you mark this?

May I have that marked as G.C. 45.

(Whereupon, the above-described document was marked as General Counsel's Exhibit 45 for identification.)

Q (By Mr. Blyer) I show you what's been marked for identification as General Counsel's Exhibit Number 45.

Without reading from the letter, can you just tell me what that is?

(Handing.)

A Yes.

That's the letter what my boss sent me I should report to work at November the 10th --

Q And --

A And if I don't report --

Q That's enough.

Thank you.

Now, after you received this letter, did you go down to the shop to talk to him?

A Yes.

A couple of days later, I went down there and I asked -- was with him.

I said, "George, what is that letter mean?"

He says, "exactly what letter says."

I says, "if you don't report by November the 10th", he says, "you won't have a job any more."

Q Did you say anything to him about that?

A No.

I said I won't go to work.

I says I belong to the union and I insist I can't go out.

I says I can't go to work with you.

Q And did he say anything?

A No.

He didn't say nothing.

He says, well, if you can't come to work --

Q Now, after that, in around January or February of 1976, do you remember again going down to speak to George?

A Yes, I went down.

Q Now we are talking about George Junior in each case, right?

A Junior, yes.

Q On that occasion, when you got there, were you with anybody else?

A No.

I was by myself.

MR. ZISKIN: I am going to object.

Are you amending your complaint the allege dates not already in?

Because January or February does not appear to be alleged --

MR.BLYER: What's the last thing you have?

MR. ZISKIN: December.

MR. BLYER: In or around December.

MR. ZISKIN: January and February never came to be in or around December.

MR. BLYER: I move to amend the complaint to include January and February of '76.

MR. ZISKIN: What part of the complaint are you moving to amend?

There are several parts -- paragaphs.

MR. BLYER: All the paragraphs relating to Greenpoint:

MR. ZISKIN: All ofthem.

JUDGE FRIEDMAN: We don't have to do that.

It's paragraph 12-C.

MR. BLYER: Let me allege then --

JUDGE FRIEDMAN: I don't see anything that --

MR. BLYER: Let me move to amend paragraph 12 -- one second -- 12-D, Your Honor.

JUDGE FRIEDMAN: D?

MR. BLYER: Right.

And 12-E to include period of time in or around January and February of '76.

JUDGE FRIEDMAN: No objection?

(No response.)

JUDGE FRIEDMAN: So amended.

MR.BLYER: Thank you.

Q (By Mr. Blyer) Now, Mr. Matzell, when you visited the plant in January or February of '76, did you have a conversation with Mr. Geuther?

A Yes.

He said what are you doing here.

He says you got no more job here.

He says there's no job here for you.

Q What did you say?

A I don't know exactly what I said.

I said I came down here and check up on what the job is.

Q Did you have any other discussion at that time?

A No, not much.

What can you say, if the boss says you got no job here --

Q Now, can you tell us the words that he used as best you can?

A Well, when I came down, he says, "what are you doing here. He says you got no more job here."

Q And your response?

A I says,"what can I do?"

Q Do you remember anything else being said at this time?

A No.

Q I am sorry?

That's all you remember?

A Yes.

Q Now, prior to, and this is just for background, Your Honor, prior to the time -- to the strike, did you have any conversations with George Geuther about the possibility of a strike?

A Well --

Q That means before the strike began?

A Mr. Geuther said before the strike, about a week or so before, he says he intends to go out of the union.

He says he's not going to sign with 455.

He says you can join the union too.

I says, "why should I join the union, I says we have a union."

And then he stopped right there.

But --

MR. ISRAEL: Objection, Your Honor.

Q (By Mr. Blyer) Well, what were the words that he used as best you recall?

A He says I am not going to sign with 455.

He says I am going to join the 18, and I want you guys to join it.

Q What did you say to him at that time?

A I says I am not joining no union.

I says I belong to a union.

Q Do you recall was anyone else present when he said this?

A No, I don't think so.

They were all in the shop.

I was talking to George himself.

Q This is George Geuther, Junior, again?

A That's right.

MR.BLYER: Thank you very much, Mr. Matzell.

MR.ISRAEL: Statements, Mr. Blyer?

MR. BLYER: This is not an affidavit, but I think it comes within the Jencks rule so I will give it to you.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Matzell, I show you this exhibit marked General Counsel's Exhibit Number 45, and I will ask you, did you provide this to Mr. Blyer?

(Handing.)

A Did I --

MR.BLYER: This is the original.

A Yes, I did.

MR. ISRAEL: You did not offer this?

MR. BLYER: No.

I had it marked -- identified, that's all.

Q (By Mr. Israel) Did you provide that letter to Mr. Blyer?

A Yes.

I brought that letter along today.

Q I see.

Now, did you ever tell the Board agent that you no longer have that letter?

A Yes.

I only found it this week.

I did.

Q Up until this week you didn't have it.

This week you found it?

A I found it.

It was in my drawer.

All the union papers and everything in there, I found that letter.

I say here's that letter, I am going to take it along, I had the subpoena, I am going to take it along.

Q Mr. Matzell, after the strike, how often did you go down to the plant?

A After the strike, you mean between the strike --

Q Starting July 1st?

A Twice a week.

Q For how long?

A For about three or four weeks.

Q And then?

A And then Mr. Geuther came to us, he said well --

Q I just want to know how often you came down --

A After, not too often.

Maybe about once a month or so.

Q For how long?

A Maybe up to November or December.

Q After November or December?

A I went on the picket line.

Q How often were you at the picket line?

A About a month.

Once a month.

Q In November --

A Oece a month.

Q Once a month?

Q Starting in November or December?

A Yes.

Q And after that?

A Once a month.

Q I can't hear you?

A Once a month.

Q And right now?

A I didn't go down.

Right now I am working.

Q When was the last time you were there?

A I was down there, I don't know exactly when I was down there.

About four or five weeks ago.

Q And when you went down there on these occasions, did you look at the plant -- the building?

A Yes.

I looked at the building.

Q Did you notice whether any of the office windows had been broken?

A Yes, the windows were broken.

I even spoke to George that time when the windows were broke.

He says, "look, what they done again, your fellow brothers."

I say, "why do you blamethe union?"

I said the windows were broken before.

Did you see them?

He says no.

I says the windows were brok[illegible] before we went out on strike too.

I says who broke them then, the union too.

Q You didn't see any broken --

A I didn't.

One occasion I came down there during the strike where windows were broken too and the door was broken.

He says look what they done to me.

I says, I am sorry Joe, I says I didn't do it. I wasn't here.

Q Did you see the dorr at that time, was the door broken?

A Yes.

I did see it.

Q There were things written on the walls of the building weren't there?

A Not that I remember.

There was noting written on the walls.

Q Never saw anything written on the walls?

A No.

Q Did you ever take pictures of any on working in the plant during the strike?

A Never.

Q Did you see anyone taking pictures of anyone working in the plant?

A Never.

Q Did you ever speak on the phone to the wife of anyone working in the plant during the strike?

A No, I would never do that.

Q Do you know if any of the other pickets did that?

A I wouldn't know.

I don't think so.

MR. ZISKIN: I can't hear.

A No, not my recollection.

MR. BLYER: Excuse me, Your Honor, they just couldn't hear your voice, that's all.

Q (By Mr. Israel) Do you know Mr. John Bell?

A John Bell, no.

Q Do you know a John who is a business agent of Local 455?

A John, business agent, no.

Q Do you know -- when you were there, did any of the business agents of 455 come down to the plant?

A William Morey and a --

MR. BLYER: If I may Your Honor, it's Matienzo, M-a-t-i-e-n-z-o, and he's a business agent of the union.

Q (By Mr. Israel) You don't know whoMr. John Bell is? You never heard of him?

A No.

Q Did you see the tires of any vehicles of Greenpoint cut?

A No.

Q Did you see the tires of any cars or trucks in front of the Greenpoint plant cut?

A Cut, I saw once, standing outside against the building, he says they just slash my tires.

Q Who said that?

A Mr. Geuther, Jr.

Q Did you look at the tires?

A No.

They were laying -- standing.

I saw them laying against the building, I even told him, I says how do you know the union done that again.

I says some kids could pass it too and stab -- down that section where we were, down there, anything could happen.

I wouldn't want to get caught down there dead to tell you the truth.

Q Do you know a Mr. Richard Mason?

A No.

Q Did you ever picket at the home of anyone who worked at --

A Never.

Q --Greenpoint?

Q Do you know if any other -- any of the other pickets did?

A I don't know nothing --

Q You don't know nothing?

A I mean I don't know if they ever did.
I heard that they did, but I don't know.

Q Who did you hear that from?

A The boss said that they picket when I spoke to him, that they picket the houses.

Q Did he tell you the names of the people whose homes were pickted?

A No, he did not.

Q Do you know Mr. Tony Zaffino?

A He's the vice president from Local 455.

Q Has he been at the plant during the strike?

A Yes.
I saw him a couple of times down there.

Q Mr. Matzelle, did you ever tell anyone that you were afraid that if you came back to work you would be physically harmed by the other pickets?

A If I told anybody --

Q Did you ever tell anyone that?

A No.

Q Did you ever tell anyone that if you went back to work you felt you would be physically harmed by the representatives of Local 455?

A No.

Q Now, in the month of July of 1975, did you have occasion to see if the overhead door to the plant was broken?

A Overhead door?

Q Yes.

A Yes, I saw that door was broken.

Q Was it slashed?

A That I don't know.

I saw the door was collapsed, when I came down in the morning for the picket line.

Q Did you notice the plant had been broken into?

A The boss said the plant was broken in.

Then I says how did it happen.

He says they must have pushed it in with a car or whatever.

I says who do it.

He says who else, the union. So I don't know.

Q Did Greenpoint have trucks?

A Yes, they have two trucks, small pick up trucks and a five ton truck.

Q I am sorry, how many?

A Two trucks, a pick up truck and five ton truck.

Q On that day when you saw the overhead door damaged, did you notice if the windshield of the two trucks had been slashed?

A Think one windshield -- on truck one windshield was slashed.

Q Did you notice the tires had been cut?

A I think tires were cut then too, yes.

Q Did you see if steel had been -- was poured into the locks of the building?

A I think George said some steel in the lock there.

Q Now, in the month of July, what was the lagest amount of pickets at the place at anytime you were there?

A Well, one time -- twice we were all four of us there, and then Stanley and I we were most of the time Stanley and I we were there.

Q I lose that.

A Stanley and I were there most of the time, just two of us.

Q Two.

On July 16th or 17th, were there as many as 20 pickets there?

A 20 pickets, for what?

Q I don't know.

A I don't remember. I probably wasnt there at that time.

Q I see.

How often were the police there in the summer of 1975?

A Police, when the police came, I didn't go no more.

Becuase I didn't want to have nothing to do with down there when the police were there -- one time even George told us, when I walk to the shop, I thought I am going to talk to him, like we always did, and then he says go back 50 feet away from my property, we moved back.

Stanley and I we were there that time too.

And then the police come. I know something was going on in the shop.

Q At that point you started come -- coming down once or twice a month, is that what you are saying?

A Yes, that's it.

Q On the once or twice a month when you would come down for the rest of the year, were the police generally there?

A The police are still there now.

Q Are they there around the clock?

A I suppose so.

Q How many police are th[illegible]

A The lastttime I was dow[illegible]ere there was one policeman there.

Q Did you ever hear Mr. Sahifano say to George Junior if you don't call the police off you are in trouble?

A No.

Q Did you ever hear Mr. Schifano threaten either George, Jr. or George, Sr.?

A No.

Q Did you everhear Mr. Schifano say to either one of those two men, I am warning you, I am threatening you, get the police away from here, get them off my boys?

A I don't remember.

I wasn't there when they must have said that.

Q Now, in the month of October did you again see the tires on Mr. Geuther's car and on the truck slashed again?

A No.

Q You did not?

MR. ISRAEL: No further questions.

MR. ZISKIN: I have no questions, Your Honor.

MR. BLYER: I have nothing, Your Honor.

JUDGE FRIEDMAN: All right.

Thank you sir.

You may step down.

(Witness excused.)

JUDGE FRIEDMAN: Would you mind facing me and raising your right hand.

Whereupon,

ROGER WILLIAMS

having been called as a witness, and having been first duly sworn by the Judge, was examined and testified as follows:

JUDGE FRIEDMAN: Please be seated.

Now, will you give your full name and address to the Reporter?

THE WITNESS: Roger Francis Williams, 16 Cliff Street, New Rochelle.

DIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Williams, at one time did you work for Zaffino Brothers?

A Yes, sir.

Q I shouldn't say brothers -- I am sure if it's brothers --

A Brothers, four of them.

Q How long did you work there?

A Roughly thirty-one years.

Q And what job did you have?

A Layout man.

Q At the time that the strike began were you employed by Zaffino?

A No.

I was laid off for a few days before the strike.

Q And since the time you were laid off have you been back there working?

A No.

Q Are you a Local 455 member?

A Yes.

Q And, sir, how long have you been a Local 455 member?

A Since 1954.

Q And --

JUDGE FRIEDMAN: Since 19 what?

THE WITNESS: '54.

Q Do you belong to any other union?

A No.

Q Now, do you recall one day in about January of 1976, standing in front of your house with three other workers when Mr. Bruno Zaffino came by?

A Yes, I do.

Q Where is your house in relation to the shop?

A Right across the street.

Q And at the time who were you standing there with?

A Bob Catalano, Joey Zaffino, and Joe --

MR. ISRAEL: Can we have the spelling?

MR. BLYER: C-a-s-s --.

MR. ISRAEL: Who is the first one?

MR. BLYER: C-a-t-a-l-a-n-o.

And Joe C-a-s-s-a-r-a and Joe Zaffino, same last name --

MR. ISRAEL: All right.

Q (By Mr. Blyer) The three men that you mentioned, did they work in the Zaffino shop?

A Yes.

Q And Joey, is he related to Bruno Zaffino?

A His son.

Q Now, step by step, please tell us what happened while you were standing there in front of your house?

A We were down there, we always gather around in front of the house, my wife can make them coffee once in a while.

And we are standing there, just, you know, talking, looking at the shop, see if any pickets were going to come down or anything.

And then Bruno come around, pulled out over and start talking to us.

Q When you say he pulled out, what do you mean he pulled out?

A Like pulled out from the shop yard.

Q Was he in anything?

A In his car, yes.

Q I see.

A Pulled out that car.

And he -- we start talking with him.

Q Keep your voice up.

A So he says he was going down to 18, if we'd like to take a ride there and --

MR. ISRAEL: I am sorry, Mr. Williams, you are dropping your voice at the end of the sentence.

JUDGE FRIEDMAN: Mr. Zaffino said what to you?

A He said he was going down to the 18, and he said if we'd like to come around and find out what they offer you in the way of benefits and so forth.

Q Okay.

And what did the man say?

A Well, we didn't have nothing to do so we took a ride down with him.

Q Okay.

In his car?

A Yes.

Q Who went?

A The four people -- the other threeppeople and myself and Mr.Zaffino.

Q Now, when you got there -- first of all, where did you go?

A We went to New York to the 18 building.

Q And when you got there tell me what happened?

A We went up into this room, big room like this.

And we were introduced to a couple of people there.

And we sat down.

And we asked them queations about the union.

And I asked them about --

MR.ZISKIN: Objection, Your Honor.

A -- pension plan.

MR.BLYER: Your Honor, I'd like to --

JUDGE FRIEDMAN: Ask your next question and then I will see whether I will --

MR. BLYER: I know his objection and I would like to take the testimony subject to connection to the union.

I intend to call Mr. Bruno Zaffino, who was -- who participated in this trip, and who I believe will identify who in fact the gentlemen spoke to.

And of course --

JUDGE FRIEDMAN: I will take it subject to that connection.

MR. ZISKIN: Couldn't we at least try --

MR. BLYER: We can try but I know what's going to happen.

Q (By Mr. Blyer) Mr. Williams, the man who -- the two men who were introduced to you, first of all who introduced them to you?

A Mr. Zaffino.

MR. ISRAEL: Excuse me, at this point aren't there two Mr. Zaffino's?

JUDGE FRIEDMAN: This is Mr. Bruno Zaffino.

MR. ISRAEL: So long as we make that distinction because there's a Joe Zaffino now with them.

Did Joe Zaffino go down with him?

THE WITNESS: Yes.

JUDGE FRIEDMAN: And Bruno Zaffino is the one that made the introduction?

THE WITNESS: Yes.

Q (By Mr. Blyer) How did he introduce him, if you can, tell me his exact words?

A I don't know.

Q As best you can remember?

A I don't even remember the man's name to tell you the truth.

Mr. Joseph, this is Mr. Williams, and did it to all of us.

That's it.

Q After --

A The name didn't mean anything to me.

Q After he made those introductions what happened?

A We sat down and he showed us the pamphlets for the pension plans and the vacation funds and all that stuff.

Q Did you have a conversation with one of these men that you were introduced to?

A One man I did, because --

Q Don't tell me because.

Did you have a conversation?

A Yes, I had a conversation.

Q Describe this man to us, will you please?

A To me he was a short heavyset fellow and I think he smoked a cigar.

I had a cigar butt, and kind of bald.

But his name I don't know.

Q And what -- and was there another man in that room that you had been introduced to for the first time when you were there?

A There was another man in there, but this one was the one I was introduced because this is the one I wanted to ask the questions what I had on my mind about the union.

Q While you asked him these questions, where was Mr. Zaffino?

A He was in there and then he went out and come back and went out and come back.

Q What did you ask this man and what did he say to you?

A Well, what I asked him about the pension fund, because that's what I am interested in.

I am getting ready to get out, retire so I asked him what benefits as far as I remember now, I'd have to be in there five or ten years before I could get anything on pension plans and stuff like that.

Q Who said that to you?

A This gentleman, this short stocky gentleman.

Q Did you hear any other discussion in that room?

A Everybody was talking about, you know, vacation plan, hospitalization, stuff like that.

Q At anytime do you remember Mr. Zaffino actively participating in any questions or answers?

A No.

Q Okay.

Now, after this -- would -- were you asked to sign anything while you were there?

A No.

Q And when you left, how did you get back?

A Mr. Zaffino took us home.

MR. BLYER: Thank you very much, Mr.Williams.

I have nothing further.

MR. ZISKIN: Is there an affidavit?

MR. BLYER: Yes.

MR. ZISKIN: I promise this is all being offered subject to connection.

JUDGE FRIEDMAN: Yes.

And if it's not connected I will strike it all.

MR. BLYER: Thank you, Your Honor.

You would just be striking the conversation, I suppose?

JUDGE FRIEDMAN: I won't strike he took a trp trip down to the union hall, no.

MR.BLYER: May the record reflect I am handing the respective counsel the four page affidavit of Mr. Roger Williams given to the Board.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Williams prior to July 1st, which is the day the strike started, were all the -- had all the employees of Zaffino been laid off for lack of work?

A Yes.

Q Eight employees had been laid off?

A Well, some laid off before that.

There was about four of us let go the last few days.

Q And you were laid off --

A The balance of us.

Q You were laid off a few days before the strike?

A Yes.

Q For lack of work?

A Yes.

Q What work did Joe Zaffino , that's the son, am I right, what did he do before the strike?

A Excuse me?

Q What was Joe Zaffino's job before the strike?

A He was a finisher.

Q Was he laid off too before the strike?

A Yes.

Q Now, after the strike started, did you picket at all?

A No, I never picketed.

Q Did you simply -- did you stay across the street each day?

A I come out, a few guys would come down, we gather and just talk.

Q Were there any pickets at the place of business?

A Not to my knowledge.

Q You never saw any?

How often did Joe Zaffino stay in front of your house?

A He'd come down once in a while because we used to do a lot of fishing together, all of us.

Q Fishing?

A Yes.

And we gather in front there, and --

Q Did Joe Zaffino ever ask you to join another union?

A No.

Q How long had he worked for the company prior to the strike?

A I imagine at least 14 years or so.

I am not sure.

Q Now, after the strike started did you notice whether work was going --was being done in the Zaffino plant?

A The only work that I could see, they had the doors shut, was themselves, you know.

To me it's like minor jobs, you know, some come in for a little piece of steel or something like that.

I never seen no major stuff.

Q When you say you never saw the major stuff, does that go from the beginning of the strike until now?

A Yes.

Q Are you working now, Mr. Williams, by the way?

A No.

Q Are you still -- you still live across the street from the plant?

A Yes.

Q Have you ever seen -- since the strike started -- seen anyone working in the plant other than the Zaffinos?

A No.

Q Have you ever been in the plant since the strike?

A I been in there a couple of times.

Q Have you seen any employees working in the plant other than Zaffino brothers?

A No.

Excuse me, can I clarify myself?

JUDGE FRIEDMAN: Yes, sir.

A I went in the office, I never went into the shop.

I went in, you know, to find out the scope, if there was anything going on.

Q I gather from the office you cannot see the plant?

A No.

Q Did Mr. Bruno Zaffino at any time ever tell you that another company Charla was signing with another union, but that it was up to the employees themselves as to whether -- as to what they wanted to do about the union?

A He told us Charla was trying to sign with another union.

But like I said, he talked to 18 to us too, but not -- don't know how to explain myself -- not to force us to sign a union, but to look into the matter to see if it was for your own benefit.

Q Did he ever say to you that you the employees had to decide for yourselves about any union?

A He says yes, we would decide for ourselves.

Q Now, there came a time when you said Mr. Bruno Zaffino drove you down to the union?

A Yes.

Q He spotted you in front of your house and he asked you if you wanted to go with him?

A Yes.

Q And Joe Zaffino went also?

A Yes.

Q Whose son is Joseph?

A Bruno's son.

Q Up to that point had Bruno ever spoken to you about any other union? I'm sorry, did Joseph speak to you?

A Joe never spoke, no.

MR. ISRAEL: Would you mark this Respondent's Exhibit 14.

(Whereupon, the above-described document was marked as Respondent's Association Exhibit 14 for identification.)

Q (By Mr. Israel) Mr. Williams, I show you this statement marked Respondent's Number 14.

I will ask you if you can identify it?

(Handing.)

A Yes.

That's the one I made.

Q This is the statement bearing your signature?

A Yes.

Q Now, page three bears the statement, I guess that I was tried to play both ends against the middle if you know what I mean.

Do you recall making that statement?

A Yes.

Q Mr. Williams, at all times was your impression that Mr. Bruno Zaffino was saying to you what you do with the union is totally up to you?

MR. BLYER: Objection, Your Honor.

To call for the gentleman's impressions.

I think that's objectable.

He can testify to what was told to him, not his impression.

JUDGE FRIEDMAN: Sustained.

Q (By Mr. Israel) Did Mr. Bruno Zaffino tell you to join another union?

A No.

Q Did he ever tell you you'd lose your job if you didn't join another union?

A No.

Q Did he ever promise you anything if you signed another union?

A No.

Q He did say to you if you want to join another union that's strictly up to you?

A Yes.

MR. ISRAEL: No further questions.

MR. ZISKIN: No questions.

Q (By Mr. Blyer) Mr. Williams, do you recall attending a meeting in around January of '76, that was called by Mr. Bruno Zaffino?

A Yes. But we didn't --

Q I am just asking, did you go to such a meeting?

A I don't remember if I went to that meeting --

MR. ZISKIN: Your Honor, this is improper redirect.

This wasn't covered on direct.

MS. HARPER: Questions that was --

MR. BLYER: It's in response to some of the questions that have been posed by Mr. Israel.

JUDGE FRIEDMAN: All right.

Go ahead.

Overruled.

Q I am asking you, do you recall ever attending such a meeting or not?

A I guess I did if the other fellows did.

Q Do you remember a meeting where the other fellows were present and Bruno Zaffino spoke to you?

A Yes.

You are right.

That was on a Saturday, I am pretty sure.

Q And what did Mr. Zaffino tell you at that meeting?

A About 18.

MR. ISRAEL: Could we fix the time of this?

A But --

JUDGE FREIDMAN: Yes.

I'd like the time fixed.

A He showed us the plan --

Q One second.

MR. BLYER: In my question I said in around January of '76.

JUDGE FRIEDMAN: I am sorry.

Q (By Mr. Blyer) He showed you the pension plan, wages?

A You know.

And benefits of the 18.

Give us the sheet to look at.

Q What was -- what did the sheet say?

A It was all about pension plans, vacation and stuff like that.

Q That who had to offer?

A 18.

Q And did he say anthing about this -- what 18 had to offer?

A No, he didn't.

Q Pardon me?

A No, he didn't.

Q All right.

Do you remember anything else he discussed at this meeting?

A No, not roughly I don't.

Q Do you recall anything about him discussing how he was having financial problems in getting work because of 455?

A Yes.

Q

Q In relation to that, did he say anything about 18?

A He said it might be cheaper for him to be into 18.

Q Did he say anthing else, what would happen if he was in 18, that you can remember?

A No, truthfully can't.

MR. BLYER: Thank you very much, Mr. Williams.

MR. ISRAEL: No further questions.

MR. ZISKIN: Nothing further.

JUDGE FRIEDMAN: Thank you, Mr. Williams.

(Witness excused.)

JUDGE FREIDMAN: Raise your right hand.

Whereupon,

ROBERT JAMES CATALANO

having been called as a witness, and having been first duly sworn by the Judge, was examined and testified as follows:

JUDGE FRIEDMAN: Please be seated.

Give your full name and address to the Reporter, please?

THE WITNESS: Robert James Catalano, 37 Drake, New Rochelle, New York.

DIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Catalano, were you working for Zaffino in 1975?

A Right.

Q And when was the -- was it that you were laid off from Zaffino?

A I was laid off in April.

Q And how many years had you been working for Zaffino?

A 22.

Q And how long have you been a Local 455 member?

A Actually 17 years in 455.

Q Are you still a member?

A Right.

Q You belong to any other union?

A No.

Q Have you -- withdrawn, please.

Have you been back to work for Zaffino since the strike?

A No.

Q Now, around the 1st of the year, 1976, do you remember attending a meeting which took place at the shop of Zaffinos?

A Yes.

Q How did you learn of that meeting?

A I think we all, just happen to walk in, I heard from word-of-mount or something like that.

Q And when you got there, who was presentt there?

A Bruno.

Q Besides Bruno, anyone else?

A All the men.

Q How many would that be in number?

A Eight or seven.

Q And will you tell us what Bruno told you -- told all the men?

A He was talking about trying to get out of one union, -- I recognize --

MR. ISRAEL: Objection, Your Honor unless --

JUDGE FRIEDMAN: State what he said

Q Just tell us what he said, the words he used as best you can remember?

A I -- he was reading off a slip of paper actually.

Q Yes.

A And he was saying if he can get in some other union, I imagine it was, he could give us lower bids and things like that, and we could probably get more work that way.

Q What did he read specifically off this piece of paper?

A He said we won't lose none of the stuff we built up in this one place and all the things like that.

Q Did you tell you what the paper was about?

A I imagine it was --

MR. ZISKIN: Objection.

Q Did he tell you what was on the paper?

A Yes.

He was saying -- specifically -- I imagine he said it was 18.

MR. ISRAEL: Objection to imagine.

Q When you use the word imagine, don't use that word --

JUDGE FRIEDMAN:- Strike out imagine and just state what he said and what you read or -- if you saw the paper.

A He said if we can get out of 455 and get into another union, he could go here on his bids and probably get more work or we would all get more work.

Q Okay.

Do you recall him mentioning the name of this other union?

A It was 18.

Q Okay.

And did he tell you about anything about 18?

A That's what he was telling us, he was telling us what benefits and what welfare and stuff we get.

Q Okay.

Now, around -- sometime after, do you recall standing -- being in front of Mr. Williams' house and -- when Mr.Zaffino came by?

A Right.

Q And at the time who was there besides --

MR. ZISKIN: Could we have the time?

I don't think we have a time frame.

Q How much after this meeting would you estimate

JUDGE FREIDMAN: Sustained --

Q -- Mr. Zaffino came by while you were standing in front of Mr. Williams' house?

A I would say about three, four weeks.

Q Okay.

And who was there beside you and Mr. Williams, if anyone?

A Joe Zaffino, Joe Cassara.

Q Anyone else?

A And Bruno.

Q Okay.

Now, did you see where Bruno came from?

A From the shop.

Q And was he walking, driving or what?

A Actually outisde the shop.

He was getting in his car.

Q And when he approached you what did he say to the four of you?

A He say he was going down 15th Street and see about 18 or something.

Q Yes?

A And we said we'd take a run down with him and see what the heck he was talking about.

Q And when you got there ---where did you go?

A Went down 15th Street, down in New York.

Q When you say we, who do you mean?

A Roger Wiliams, Joe Cassara and Joe Zaffino and myself and Bruno.

Q And when you got there, were you introduced to anybody?

A Well, they said who the name was but I wouldn't even know the name to tell you the truth.

Q Who introduced you?

A One fellow walked in, he introduced us to so and so, and that was it.

Q And after you were introduced -- how many men was it one or two or what?

A It was two sitting at the table.

Q After you were introduced to those -- to these two men where did you go with them?

A He took us into his -- this big conference room.

Q Who did he take in there, sir?

A The whole five I mentioned.

Q And what happened in the conference room?

A They -- then we had --

MR. ZISKIN: Your Honor, I am going to object.

I think Mr. Blyer knows that we got a problem with identification and why he doesn't try frankly to set a foundation before I have to say this everytime I really don't know but I really appreciate it if he would try.

JUDGE FRIEDMAN: I think, Mr. Blyer, you should try to identify who these individuals were.

Q (By Mr. Blyer) You have already stated you don't know the gentleman's name.

Can you identify what he looked like?

A I could if I saw him.

Q Tell us without seeing him what he looked like?

A He was -- he must be less than I was, maybe 40 years old, 200, 210 pounds, thin and light hair.

Light complexion.

Q What color hair was it?

A Kind of light, redish brown, blond, something like that.

Q Does the name Dennis Silverman ring a bell?

A I don't know to tell you the truth.

Q Okay.

Now, how many men --

MR. ZISKIN: This -- is this going to be subject to connection?

MR. BLYER: Yes, Your Honor.

JUDGE FRIEDMAN: That's the only reason I am taking it.

MR. ZISKIN: I wish Mr. Blyer for the record would say what he's doing.

JUDGE FRIEDMAN: I will say it for the record.

MR. ZISKIN: Thank you.

JUDGE FRIEDMAN: I will take this subject to connection until there's some definite idea of this individual to the point where we can definitely say who he was or where the record shows who he was.

Q (By Mr. Blyer) How many men were in this conference room beside the five of you speaking to the five of you?

A It was two actually.

Q Now, how many were you speaking to?

A We are going back and forth.
One to the other.
Asking questions.

Q What were the questions you were asking and what were the answers, as best you can recall?

A You put so much time in one place, one union, you want to know if you ever di go in that union, what were you going to lose and what would you gain on that deal.

Q Do you remember anything more specific or anything else?

A That's about all it came out -- came down to.

Q How long would you say you were in there?

A Probably an hour mostly likely.

Q Probably an hour.
And was Mr. Zaffino there with you?

A Right.

Q Bruno I am talking about?

A Right.

Q And were you asked to sign anything while you were there?

A No.

Q And when you left, how did you get home?

A Bruno's car.

MR. BLYER: Thank you very much, Mr. Catalano.

I have nothing further.

Here's his affidavit.

Please let the record reflect I have -- I gave all parties Mr. Catalano's affidavit.

CROSS EXAMINATION

Q (By Mr. Israel) Mr. Catalano, when Mr. Bruno Zaffino drove up to or passed Mr. Williams' house in his car, which of the employees asked him where he was going?

A I saw him in front of the shop.

Probably I asked him.

I don't know.

Q Is it not a fact that the employees asked Mr. Bruo Bruno Zaffino if they could go with him and he did not ask them == ask you if you wanted to go with him?

A Yes.

That's right.

Q Which of you asked if you could go with him?

A I don't know.

Q It's a fact it was that you, the employees, who asked him if you could go with him?

A I will say myself, I asked to go.

I don't know what the others asked him.

MR. ISRAEL: Your Honor, would you have his -- may we have his statement marked for identification?

JUDGE FRIEDMAN: Surely.

That will be Respondent's Number 15.

(Whereupon, the above-described document was marked as Respondent Association Exhibit 15 for identification.)

Q (By Mr. Israel) Mr. Catalano, would you look at Respondent's Exhibit 15, and see if you can identify the same and tell us whether that's your signature on the last page?

(Handing.)

A That's mine.

Q That's your signature, and your statement?

A Right.

Q Mr. Catalano, paragraph seven, page three contains the statement in reference to Mr. -- Bruno going down to 18, we asked if we could go along and see whats the story was with 18, Bruno said sure, and he gave us a ride.

Is that a true statement that we asked if we could go?

A I asked -- I told -- I just told you that.

Q Well, it says we.

Who is "we"?

A Four people that went, I guess.

MR. ISRAEL: I have no further questions.

MR. ZISKIN: I have no questions, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Blyer) Mr. Catalano, before you say -- excuse me, that's withdrawn.

Before you said that you wanted -- you asked Bruno to go.

What did he say to you?

A He said he was going to 18.

Q Now, can you be sure that anyone else said the same thing as you, namely --

A Not postively.

Not postively because I heard some people even got called to go down.

MR. ZISKIN: I move to strike.

MR. ISRAEL: Move to strike.

JUDGE FRIEDMAN: Sustained.

Strike.

Q We are only talking about this incident right now.

You recall yourself asking him to take you along?

A Right.

Q But is it your testimony that you can't say that you heard anyone else ask him as well?

A Right.

Q Did you ever get called on the phone by him to go down?

A No.

MR. BLYER: Thank you.

I have nothing further, Your Honor.

MR. ISRAEL: Nothing.

MR. ZISKIN: Nothing further.

JUDGE FRIEDMAN: Thank you, Mr. Catalano.

You are excused.

(Witness excused.)

JUDGE FRIEDMAN: I just want to instruct the General Counsel and the Charging Party that regardless of how many witnesses you have here tomorrow, we are going to finish with Mr. Colavito.

MR. BLYER: Fine.

JUDGE FRIEDMAN: So just guide yourself accordingly.

I don't know how long it will take.

I can't give you any promises.

MS. HARPER: We understood that.

MR. BLYER: Fair enough, Your Honor.

MS. HARPER: We warned the people, as a matter of fact.

JUDGE FRIEDMAN: Now, as you know, Mr. Israel still has some questions, he said he estimated about another half hour or so.

MR. ISRAEL: Half hour to an hour, I think.

JUDGE FRIEDMAN: Yes.

And then, of course, we have Mr. Spigner, I don't know how long he will take, and I have no idea.

So I would assume that you'd better figure close to -- close to the better part of the day.

MS. HARPER: We certainly figure the morning.

We will have the four or five people here anyway.

JUDGE FRIEDMAN: If you don't have them here until noon that's all right.

MS. HARPER: Unfortunately, I tried to tell them about noon.

I already contacted them to be here at 9:30, but I think they are prepared to stay the day.

JUDGE FRIEDMAN: I will not entertain any motions to interrupt his testimony.

MR. BLYER: I won't make one.

MS. HARPER: I think it will be easy to get through with those people in the afternoon.

JUDGE FRIEDMAN: Fine.

Now, tomorrow I will also make the decision as to whether or not there is to be a consolidation with the

C.B. Case against the Charging Union in this case.

MS. HARPER: I will be prepared to address myself to that.

JUDGE FRIEDMAN: All right.

And I also want to state that at that time we will, regardless of how I decide, we will fix the date for a continuance of this hearing at that time.

MS. HARPER: We are to assume then there will be certainly no hearing on Friday?

JUDGE FRIEDMAN: There will be no hearing on Friday.

MS. HARPER: Fine.

JUDGE FRIEDMAN: All right.

We will adjourn until 9:30 tomorrow morning.

(Whereupon, the hearing was adjourned at 5:20 o'clock P.M.)